Supreme Court, U.S.
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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College, Johnson, Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

PETITION FOR WRIT OF CERTIORARI

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175 PP

Federal Questions to be Decided by the

Supreme Court of the United States

Should students be punished for completing their assigned scholastic requirements, said punishment the antithesis of traditionally nominal and actual student role behavior,said punishment a total deconstruction of the historic, meritorious Academic Due Process in America?Most importantly, should the liberties and restraints, rights and responsibilities,property and intellectual possessions of all scholars,teacher-students and by extension all citizens, be substantially cancelled and voided by the self-serving,arbitrary requirements of rogue scholars,their incestuously associated rogue educational administrators and mercenary, corrupt legal advisors??? Should an ersatz, fraudulent "academic due process" now proceed de jure as well as de facto, in that the Vermont Supreme Court has expanded the "HOROWITZ V MISSOURI" ruling of two decades ago, equating mere academic jurisdiction with traditional esoteric,academic expertise? Should the state courts in Vermont be allowed

to rely on the prerogatives of academic expertise, set forth succinctly limited in "HOROWITZ V MISSOURI", to such a pro-forma,talismanic extent that there is now no check on the excesses apparent in the mis-labels within this petition,thus returning academic prerogative to the 19th century definition of schoolmaster rights and privileges?Should the Vermont Court rulings based on "HORO-WITZ" substantially undermine not just the lim-its of authority explicit in "HOROWITZ",but overturn in the main liberties, restrains,rights,responsibilities,intellect-ual and real property possessions of scholars,teacher-students and by extension,all citizens,found in the U.S. Supreme Court decisions rendered in "KEYESHIAN V REGENTS", "TINKER V DES MOINES","GOSS V LOPEZ", "REGENTS V BAKKE",as well as the "HOROWITZ" decision itself?Should the body of contemporary law flowing from these Supreme Court decisions,minimally intruding into the profession of teaching to ensure within the teaching profession the Constitutional Rights of all,in this case Rights found in US Constiution,Amendments 1,4,5,6,8,

13 and 14; Article I,Section 9; 20 USC 1232 g.,h.;34 FRC 99 et al; and 20 USC 1097; be now suborned to the "academic pre-rogatives" of scholastic scoundrels and their accessory-to-and-after-the-fact legal/political allies?.In the wake of "TINKER V DES MOINES",this petitioner's career was mortally exposed to the Constitutionally mandated risks historically and traditionally bred on the academic campus.This petitioner,hereafter teacher-student, begs the Court to reverse the Vermont decisions to trial, and with this reversal substantially define the American Academic Due Process afforded the American Society by the Basic Documents,restore Constitutional freedoms to the profession of teaching,removing simultaneously a de novo Constitutional exemption,and its concommitant terror,granted by the Vermont Courts to a class of techno-bureaucrats now legally self- empowered under "HOROWITZ" to punish students who completed their homework.learned their lessons and then had the strength to act Constitutionally consistent with their new found knowledge.Should

these students disproportionately bear the risks and liabilities of education while their teachers,constitutional barbarians on and about the Johnson State College campus,avoid all risks and liabilities, using the students as pawns to avoid a balanced,fair,disputatious Academic Due Process,a process Constitutionally strewn with career risks and rewards for all parties equally,an academic due process distributing these risks and rewards to faculty as well as student careers?

The Vermont Courts' decisions have substantially defined this "ersatz" academic due process as genuine Academic Due Process.

What does the Constitution say?

Signed this day, the 18th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

Reformatted 12/7/94

John Lucas

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"Board of Curators of the University of Missouri v Horowitz", 435 US 78 (1978)

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"Klein Independent School District v Mattox", C.A.5 (Tex) 830 F2d 576(1987)

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"Matthews v Eldridge", 424 US 319 (1976)

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"Regents of the University of California v Bakke", 438 US 265, 311-12, 319 n 52, 404(1978)

"Tarkla v Cunningham", 917 F.2d 890 (5th Cir 1990)

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

Bill of Attainder, Ex-post Facto Legislation Clause, Art 1:Sect 9;

Freedom of Speech, Peaceful Assembly, Redress of Grievances Clauses, 1st Amendment; Unreasonable Search and Seizure Clause, 4th Amendment; Life, Liberty and Property Due Process Clause, 5th Amendment;6th Amendment (Complete);Cruel and Unsual Punishnent Clause, 8th Amendment;13th Amendment (Complete);Due Process Clause, 14th Amendment; All of the United States Constitution, as amended

20 USC 1232 g, The Family Educational Rights and Privacy Act of 1974,(FERPA), aka The Buckley Amendment

34 Code of Federal Regulation 99; FERPA Regulations

120 Congressional Record 39, 892 (1974)

20 USC 1232 h, Protection of Pupil Rights

Chapter 1, Article 1: [All men born free, their natural rights, slavery prohibited], Vermont Constitution 1777, 1786

1 VSA 315-320 The Vermont Access to Public Documents Laws

16 VSA 12 Oaths of Affirmation (for professional teachers) 1968

16 VSA 164 (5), 1692, 1695, 1697, 1792 (a), 1751, and Chapter 59, Vermont Statutes authorizing the Training and Licensing of Teachers (Educators)

Vermont Department of Education Regulations 5100 through 5900 (July 1991)

Vermont Department of Education Regulations 4300 (Disciplinary Actions) Auth 16 VSA 1162

Vermont Attorney General Report April 30, 1993, Re: Spaulding High School Internal Processes

New England Association of Schools and Colleges "Standards for Accreditation", Commission on Institutions of Higher Education 1992

Johnson State College Department of Education Student Teacher Handbook 1991-92

Johnson State College Academic Policies (ACA designation) 1991

ACA 28.2; Appeal of Academic Policies

ACA 32; Academic Dishonesty

ACA 13; Grading System

ACA 6; Graduate Registration

ACA 16; Repeat Course Option

ACA 3.1; Course Numbering

STL 2.1; Student Code of Conduct 1991-92

ACA 53.1; Early Warning (Poor Academic Performance)

Johnson State College AFT Teachers' Contract September 1991

Barre NEA Teachers Contract 1990-1991

Barre NEA Code of Ethics (NEA Code of Ethics 1974).

"Academic Freedom and Tenure; A Handbook of the American Association of University Professors", ed; Louis Joughin, The University of Wisconsin Press, Madison, Milwaukee and London 1967

"Academic Freedom in Our Time", Robert M. MacIver, Guardian Press, NY 1967

"Joint Statement on Rights and Freedoms of Students", American Association of University Professors, 1967,1990,1991,1992

"Statement on Professional Ethics", American Association of University Professors, 1987

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

Reference to Other Reports in the Case

22 Oct 91 Johnson State College Department of Education (JSCED) "English Competency" Note

9 Apr 92 JSCED Expulsion Letter

10 Apr 92 Spaulding High School/JSCED internal suspension memo

28 May 92 Johnson State College (JSC) Graduate Committee "memo"

2 June 92 JSC Graduate Committee "Decision"

17 July 92 Vt. Attorney General referral to VSCC, Defendant Carpenter

16/23 Mar 93 JSC "Academic Dean" appeal decision

30 Apr 93 Vt. Attorney General Report:SHS

11 June 93 JSC President's appeal decision

5 Oct 93 Vt Dept of Education opinion:16VSA12

5 Oct 93 Vt Attorney General's response re: Referral of 17 July 92 to Carpenter/VSCC

Jurisdictional Grounds for Supreme Court Review

Defendants were granted Summary Judgement Motion and Order in their favor dismissing Teacher-student's 1 VSA 315-320 suit, in the Superior Court, Lamoille County, Hyde Park, Vermont, on 29 Nov 1993.

This action was appealed to the Vermont Supreme Court, Montpelier, Vermont, and was upheld, in favor of Defendants, 15 July 1994.

Motion to Re-argue was denied teacher-student 23 Aug 1994.

Teacher student cites the United States Constitution, Article III, Section 2: Appellate function of the Supreme Court in all Cases of Law and Equity, in that the Vermont Supreme Court, as the Court of Last Resort, has decided federal questions in conflict with applicable decisions of the Supreme Court, as set forth in the questions presented for review by the teacher-student, now before the Supreme Court.

Statement of Facts of the Case

Teacher-student entered the Vermont State College Corporation's (VSCC) Johnson State College (JSC) Masters of Education-Secondary (high school) licensing program in the Fall, 1991. Specifically formatted to convert undergraduate degree holders without formal education classes into licensed M.A. teachers, this program required 39 post-graduate credits, including 6 compulsory credits as a Graduate Intern student teacher.

This teacher-student completed 18 graduate credits in his first semester, a double-loaded period,with a 3.78 Grade Point Average(GPA) out of a maximum available 4.00.,with only two (2) failed "English Competency Tests" and a "B-" marring a perfect score.(Lamoille Superior Court, hereafter LaC, Exhibit:10/19/93 Return to JSC: Non-Option)English Competency is a Vermont State minimum requirement for all teaching licenses, a pre-requisite to student teaching placement and graduation as a Masters Degree holder(LaC Exhibit JSC Student Teaching Handbook. hereafter STHB). The 2 Oct 91 JSC Department of Education

(JSCED) examination for English Competency was noted as a failure, not for traditional grammar, syntax, spelling ...etc, criteria, but rather for an imprecise "...personal educational philosophy...", the single topic afforded GRADUATE students in this exam. (Undergraduates were not so limited; 1992 and successive year graduate students are not required to complete English Competency requirements by expounding on their "Personal Educational Philosophy". Competency is now based on writing samples from other sources). Teacher-student's "replacement exam", on 25 Oct 91, was constructed by the author to demonstrate purposefully stretched English constructions, a "politically incorrect" philosophy, and a test of the intent of this "English" exam. The bottom of this second exam noted a protest grievance of the "...dishonest and academically fraudulent..." presentation of a philosophy screening exam disguised as an "English Competency" test. This grievance disappeared with the second exam after being turned into the JSCED administrative office; the "graders" of either

exam are unknown JSC and/or JSCED educators (LaC 10/19/93 Exhibit: Academic Prerogative). Despite a lack of demonstrated and approved "English Language Competency", teacher-student was hurriedly assigned to Spaulding High School, Barre, Vermont, beginning as a Graduate Intern Student Teacher on 20 Jan 1992. Supposedly interned for a 16 week period to end 8 May 92 (end of JSC Spring semester), teacher-student began, on 27 Jan 92, what is most aptly and legally defined as a 15 week uncompensated Graduate Teaching Assistant experience, terminated outside of legal and academic process in the summer of 1992 (15 May-6 July 1992).(LaC Exhibits above)The first 10 weeks of the teaching experience was unremarkable, save for 1) the gross lack of mentorship by JSC and SHS paid monitors and 2) JSC supervisor Dr. Marilyn Page's cryptic announcement, 19 Mar 92, that this particular "internship"failed, by design, to meet "Vermont Standards", and thus teacher-student was failed in his "internship" although,if he was amenable, he could continue "student-teaching", as she, Dr. Page, was not removing the Graduate

Teaching Assistant from the "program" at this time .(LaC: Accdemic Prerogative)

Only at the "collaborative grading" meetings regarding 409 U.S. History (B), the class that the teacher-student had, as a Graduate Assistant teacher,essentially taught for the entire grading period in question, was there any controversy raised regarding the teacher-student's professional capacities.

At this point, the "regular classroom teacher", one Dr. Richard Wilgoren, returned to over-view the Graduate Assistant's grades for the 3rd quarter, announcing suddenly and unexpec-tedly that the grades were "...too high..";

there were "...15 incomplete homework assign-ments..." which would factor downward the Grad-uate Assistant's empirical data, empirical grading sheets which had provided for all homework assignments, as well as all other student measure, within this 3rd quarter.

Clearly fabricated by Dr. Wilgoren, the "15 incomplete assignments" were orally protested, for an 11 day period, by the teacher-student to his immediate SHS supervisor, Richard Lussier, his JSC interim field supervisor/advisor, Dr. Herbert Tilley, and to Dr. Wilgoren himself.

Richard Lussier failed to indicate over the 11 days what the next step in grievance would have been at SHS.

Dr. Tilley agreed, on 29 Mar 92, that the fabrications were no less than academic fraud, and sent the teacher-student, without JSC supervisory intervention, back to "...keep good records..." and "...work the problem out inside the system...".Dr. Wilgoren responded to teacher-student com-plaints by raising the number of "incomplete assignments" to 19, on 29 Mar 92, rationaliz-ing, on 1 April 92, this method of marking as the students' "...low socio-economic status..." and " ...unstable family emotional background..." rewards (one student was marked down for having four (4) step-mothers, appar-ently some number too many for Richard Wilgoren).

The 2 Apr 92 published student report card grades reflected substantially the "19 incomplete assignments" in both the history students' homework grades and students' overall U.S. History marks.(LaC: Academic Prerogative). The failure of any JSC or SHS mentor or supervisor to intervene or explain the "19 assignments", and the publication of public reports of deficiencies based on these fabrications, reports which the teacher-student, as co-grader, bears co- responsibility as a collaborative grader,compelled the teacher-student to file written statements regarding this "grading incident".(LaC Civil Summons 26 Mar 93)

A letter was composed to Wilgoren, with copies to Lussier, Tilley and Wilgoren's department head, Joseph Maiola, stating clearly that the "19 assignments" "...did not exist in fact...", urging that the grades be returned to normative, empirical levels.Each parent of each student in the U.S. History class received from the teacher-student a second,different letter, noting that a "...mistake had occurred in the

grading.." regarding their student,but nothing more.(LaC: Original Summons)

Letters to the parents were mailed, USPS, early AM 6 Apr 92.Lussier received his copy of the grievance letter later in the morning, 6 Apr 92, hand-delivered by teacher-student with a proviso that Wilgoren would not get his original if Lussier found alternative redress. Lussier did not, and at 2:35 PM, as promised, teacher-student hand delivered to Wilgoren the grievance letter as well as copies of notes mailed to the affected parents and students. A similar document package was deposited with the SHS office for Maiola, as well as with Dr. Tilley that PM at JSC, who refused the documents, compelling the teacher-student to deposit the papers in the mail-box of his nominal, but allegedly long absent official field supervisor, now Dr. Marilyn Page. Pursuant phone consultations with Dr. Page, evening of 6 April 92, teacher-student arrived at SHS, morning of 7 April 92, and was sent home by Lussier at the alleged direction of SHS Principal Patterson. Prior to leaving the SHS

building, teacher-student asked Lussier for both an oral, and then when refused, a written reason for the dismissal. Lussier responded to the latter by stating that a written notice explaining the "suspension" would be "...forthcoming."

No such written "suspension" notice, transmitted to this teacher-student, exists!!!

The action is a "leave of absence" until the "internal memo" of suspension is written, 10 Apr 92, backreferenced to match actions of 7 Apr 92.The clock runs from 7 Apr 92.

Notified by Dr. Page 12 hours prior, teacher-student attended, on 9 Apr 92, at JSCED, what must be described as a classic, "Star Chamber" assault upon his actions. Present were Drs Tilley and Page,as well as JSCED Department Chairwoman Carol Story.These three acted first as grand inquisitors seeking charging data, and then as "hindsight supervisors", apparently finding the teacher-student deficient based on his failure to heed official advice and professional judgement now hastily rendered, ex-post facto.

Constitutional Crisis #1: Legal suspension from either SHS or JSCED at this point triggers VtDoE 4300 regulations.4300 regs mandate full bore, quasi-judicial process, not just "...some sort of hearing..." per "Goss v Lopez", regardless of behavior if the suspension occurs outside of the 4300 regulations governing short, 10 day or less suspensions. A "short" suspension, of less than 10 days, triggers minimal hearing, notice of defect, rebuttal opportunity, and simple evidence of defect, per "Goss v Lopez", with the hearing to precede the actual suspension, written notice to student to follow.Discovery of the "internal" memo of suspension by this teacher-student, 26 May 92, weeks later, mandated a quasi-judicial hearing under 4300 regs.The JSC Code of Conduct provides for such an adversarial hearing pro-cess, and is the document sought in the initial legal action.

9 April 92 JSCED allegations of "poor data gathering","anarchistic, loose cannon vigilantism (lone ranger-ism)" were not substantiated by Drs. Tilley, Story and Page relative to extant moral or ethics codes, local,state

or federal regulations or laws.The inquisitors claimed that there were other, essential facts "...not in your (teacher-student's) possession...", but would not elaborate or divulge what this "missing information" was. Teacher-student left this meeting without oral or written charge."We'll be in touch."

On 10 April 92, subsequent a phone conversation with Dr. Page, indicating that teacher-student would be "black-listed" with the Vermont Department of Education (VtDoE) for his offenses, the letter outlining the JSCED decision on the matter, absent direct reference to "blacklisting", arrived at teacher-student's house.(LaC: Original Summons 26 Mar 93) Alleging a suspension from the High School as the "causus belli".

Admitting to an ex-post facto charging process, the 9 Apr 92 JSCED letter alleged that the accused had 1) violated 20 USC 1232g,the Family Educational Rights and Privacy Act of 1974; 2) incurred two "charges" of "responsibly" in complying with non-specific internal SHS regulations, and 3) had responsibly

complied with Vermont law regarding required supervisory meetings at SHS.

Equating charge with guilt, JSCED Professors Tilley, Story and Page 1) removed teacher-student from SHS 2) cancelled his heretofore sacrosanct Repeat Course Option to future Internships,and 3) stated that JSC would not recommend teacher-student for a Vermont Teaching License regardless, this latter sanction apparently the "...letter with black marks..." of Page's A.M. phone call.

A unspecified due process appeal could be brought, said the JSCED "decision", to the Academic Dean, now Respondent-Defendant Dr. Vincent Crockenberg.

So there!!!!!

There was no appeal of the JSCED order at the JSCED level.

On May 5, 1992, Crockenberg professed that, absent an "academic level appeal procedure" extant in written form, that he, Respondent-Defendant VSCC General Counsel (and then current SHS school board member) Stanley Carpenter, Esq,and Dr. Daniel Towner of the Faculty Governance Graduate Committee would create an ad

ad hoc "appeals procedure" de novo, affording teacher-student timely redress.

On or about 21 May 92, Carpenter "resigns" the process, replaced by now Respondent-Defendant Paul Sutherland, Esq, who announces this change on 26 May 92, simultaneous to his request of the teacher-student for a document list which appellant will bring to the 28 May 92 hearing called, by Towner this same day, just prior to Sutherland's phone call.The document list will enable Sutherland to effect "instant" representation of JSC at the "hearing" two days hence.(LaC Exhibit: Appendix XII)On 26 May 1992, post substantial meetings in Barre with students and parents/guardians regarding the "...information not in your possession..." JSC allegation of 7 weeks earlier, and after two meetings with different Vt. State Social Rehabilitation Services upper level officials in their Morrisville, Vt. offices discussing the information now in his possession, teacher-student files, as a mandated reporter under the Vermont Statutes,a bona-fide charge of serial Intellectual Child Abuse against Richard Wilgoren (SHS),naming

JSCED Drs. Tilley, Story and Page as accessories.

Arriving at JSC on 27 May 92, with prior notice of 22 Mau 92, teacher-student is refused access to his personal education records by a letter dictated, unsigned, by now Respondent-Defendant Dr. Robert Hahn, president, JSC.(LaC Appendix XII)

Sans records, teacher-student prepares for 28 May 92 Graduate Committee "appeals hearing", and arrives for same at 1 PM that date.

Delayed to bring a heretofore banished tape recorder into the meeting, appellant teacher-student is allowed to read an opening statement.Dr. Towner then states that "constitutional issues" will not be addressed, nor is the "behavior of Barre school employees" to be considered, and finally that successful teacher-student rebuttals of the 9 Apr 92 JSCED "charges" "....might not be a useful as you (the appellant) might think...".

Constitutional Crisis #2:The "charges" are converted to some amorphous "unfit to teach" category, in the midst of an "appeal" hearing

Fitness to teach hearings, under academic rules, are most formal hearings requiring all to participate, not "...some sort of hearing...".

In the words of committee member Dr. Black, the appellant must have done something wrong by virtue of appearing as an appellant ("... this letter (9 Apr 92 JSCED) did not state in #1 (FERPA charge) what you did...in great detail... it does state what you did wrong."), the fouls apparent to Black by virtue of the sanctions and punishments pronounced by his peers upon the appellant.

Chairman Towner recesses to call long-absent JSC field supervisor Page to the hearing. Dr. Page refuses to walk across campus and attend at the behest of her nominal superior, hearing officer Towner.Perhaps Page wants to avoid discussion of the secret 27 Apr 92 "post-suspension" meeting Page and ad hoc Graduate committee member Whiting (Assistant Graduate Dean) attended at SHS that date, a meeting where the teacher-student is not graded for what he actually did in the classrooms because he has been "previously" expelled from the JSC program

based on the then extant " secret running suspension".(VtSC Exhibit #5)

Sensing an opening of the discussion under the Graduate Committee's "Robert's Rules of Order" format, teacher-student steers responses from Dr. Story into the child abuse area, one of the few legal areas Dr. Story admits knowledge of, and motions for Dr. Towner, having called an additional witness for the college, to bring in the adult and adolescent witnesses waiting outside the committee's door, witnesses with first hand accounts of Wilgoren's now unrefutable serial, felony behaviors.(LaC:Graduate Committee Process)

Dr. Towner, overwhelmed by this turn of events, states "...I don't think I want to hear this...", and summarily adjourns the Graduate Committee "appeal hearing", just after 3 PM.(LaC Exhibit: 10/19/93 Graduate Committee Process).Teacher-student's request, 30 May 92, to re-convene the Graduate Committee is rebuffed by notification of 2 June 92, purportedly 2 letters from Dr. Towner.The first, a 28 May 92 Towner "summary memo" regarding the "hearing", is perfunctorily

deficient prima facie, and is unsigned. The second "formal decision letter", signed FOR DR. TOWNER by Crockenberg's secretary, Jo Anne Lamore, is clearly, by computer code/ file/storage/billing ident, the genus of Sutherland, posing as Towner who is vacationing on Cape Cod this date.(LaC: Appendix XII)

In July 1992 teacher-student filed a five (5) page complaint plus fifty (50) pages of documentation with the Vermont Attorney General's Office, alleging that Defendant Carpenter had designed an "academic due process" through the Graduate Committee which failed the test of all academic processes found in the JSC library texts. This grievance was forwarded, without comment or review, directly to Carpenter's VSCC address.(LaC:Appendix XII)

On 7 Aug 92 teacher-student filed a 1 VSA 315-320 request with Defendant Hahn, asking for written procedures relative to the "academic appeal process" afforded and due the appellant.

On 3 Sept 92, Defendant Hahn replied, stating that the "academic prerogatives" of Professors Tilley, Story and Page governed the procedures, and that appeal should proceed to Defendant Crockenberg's level.(LaC:Academic Prerogative)

On 15 Oct 92 teacher-student filed a multi-count grievance with Defendant Hahn, alleging that all JSC employees previously involved in the dismissal/appeal process had substantially violated the JSC Code of Conduct on multiple occasions,said allegations violations in both the academic and disciplinary Code of Conduct, section V.

On 4 Dec 92, Defendant Sutherland dismisses the grievance, noting that the Code of Conduct is a "student only" code administered by, yet not binding on, JSC faculty.(LaC Exhibit: 10/19/93 Certification Fraud).

Teacher-student meets with Defendant Crockenberg twice in January and February, 1993, on appeal matters. These meetings are so non-substantive and evasive that appellant is forced to submit appeal points and arguments by mail after each meeting.(LaC Exhibit: 10/19/93 Academic Dean Meetings).

On 16 Mar 93 Defendant Sutherland writes the "Academic Dean Appeal Decision" as a "draft" letter addressed to Academic Dean Crockenberg. On 19 Mar 93 Defendant Sutherland threatens appellant student with a harassment law suit over student's multiple record requests under 1 VSA 315-320, the Vermont Public Access Document Law.

Teacher-student replies to threat, noting that the "just burden" of the College is to comply with 1 VSA 315-320, regardless of "...embarrassment or inconvenience".If Sutherland wishes to proceed to suit, teacher-student will supply a case of adult undergarments to court personnel surely incontinent with laughter.

On 23 Mar 93 JSC publishes "Academic Dean Decision" rejecting the appeals of the student. Not only is the content of the "decision" inconsistent as to chronology and statements of fact,but the computer code /file /storage /billing ident on this document is consistent with attorney Sutherland documents, including the "Graduate Committee" decision of 2 June 92 and the 19 Mar 93 "harassment suit" letter. The enumeration on this computer code indi-

cates that the 23 Mar 93 document was created PRIOR to the 19 Mar 93 Sutherland "harassment lawsuit letter".(10/19/93 LaC:Plaintiff's Motion to Secure Documents)

On 26 Mar 93 teacher-student, citing 7 Aug 92 request of President Hahn for documentation, files a civil action, in the Lamoille Superior Court (LaC),Hyde Park, Vt., against Defendants Hahn,Crockenberg,and Carpenter,under 1 VSA 315-320, alleging that Defendants withheld the JSC Code of Conduct appeals process,the only documented academic and disciplinary process which allows for expulsion under the teacher-student's circumstances (sufficient grade point average, allegations of regulatory, no clinical defect), created an ersatz process to "...heinously and callously..." disguise governmental frauds and deceptions, asking the Court to compel discovery of the JSC Code of Conduct and compel the Defendants pay costs and fees to teacher-student for the delay.Service is USPS, Return Receipt Requested,to Defendants,Legal Process Service (Sheriff) to Corporate Agent of Record, Atty Sutherland.On 29 Mar 93 Sutherland refuses

official service, stating that he is not the agent of record for VSCC. By phone, teacher-student is told by Sutherland to serve individual defendants, by Sheriff's Deputy, which is accomplished 1-2 April 1993. (LaC: Summons to Defendants, LaC : Response to Summary Judgement Motions)

On 1 June 93, Defendant-Attorney Carpenter swears, by affidavit to the Court (LaC), that he never received a request from Plaintiff regarding "process documentation", the massive referral from the Vt. Attorney General's office to Carpenter, transmitted to Carpenter in 1992, not withstanding.On 11 June 93, Defendant Hahn issues a "final" appeal decision, upholding the previous appeals and supporting the JSCED expulsion decision.In the final paragraph,the charge to which the teacher-student has been long held deficient, a charge previously unpublished,genus in camera et in abstentia to the accused but known to the College,a charge of academic sedition, is finally published.(LaC:Plaintiff's Brief 6 July 93)

The teacher-student's "...consistent refusal to accept the reasoned judgements of others in positions of authority..." is a pronouncement as preposterously pedantic it is pathetically pompous.Absent subscribed, sworn oaths of affirmation to the state and national Constitutions,per 16 VSA 12 :Oaths, documents outstanding under 1 VSA 315-320 document requests, requests to which none of the eleven (11) "educators" involved in student measurements have complied, Defendant Hahn included, but one a series of teacher-student legal document requests (1 VSA 315-320) termed by the Defendants in their Motion for Summary Judgement response to the pending civil suit as "bizarre" requests for records, the authority of the authorities is but their power as state actors to illegally proscribe, punish and steal.(LaC:1 Nov 93 Plaintiff's Supplimentary Brief, LaC: Academic Prerogative, LaC Defendants' Exhibit 1, LaC: Defendants' Motion for Summary Judgement.) Defendants motions for summary dismissal are rejected, and a hearing date of 19 Oct 93 is set for Lamoille Superior Court.

On 19 Oct 92,teacher-student argues as plaintiff that 1) no suspension has occurred and 2) that the matter is not academic, but of a disciplinary nature concealed by the "ersatz" process.

Defendants, represented by Sutherland, claim that the issue is a simple grading matter, over which the Court has no jurisdiction. Court allows for additional written argument submissions following this hearing.

Immediately subsequent 19 Oct 92 hearing,teacher-student files a motion to secure documents at Sutherland and Collins, alleging that Sutherland is the "regent" behind the "appeals decisions", a third party determinant of the student's rights, and himself and/or his law firm are thus shielded,concealed "4th" Defendants.

Neither the Defendants nor their attorneys, now the 4th Defendant(s) responded to this motion.Both Vermont Courts have failed to act on this motion, disregarding Court duty and ignoring the "liberal construction clause" of 1 VSA 315 by failing to note to plaintiff what

proper action is due in regard to securing key, incriminating evidences and documents.

The Lamoille Superior Court rules, 29 Nov 93, in favor of Defendants Summary Judgement, citing two areas.

1) Despite a suit filed regarding a single public document, the JSC Code of Conduct,the Court magnanimously and erroneously grants Defendants relief from ALL 1 VSA 315-320 liabilities potentially actionable, but not yet before the Court, in a generalized, sweeping statement not grounded in fact, which grants veracity, granting gross liberal construction,to Defendants' simple statement that ALL requests for documents have been fulfilled,absent evidence of compliance.

2) In disposing of the College's contractual certification obligations (NEASC Accreditation Contract) to have a "...clear,concise, published,and readily available ..." document pertaining to expulsion from academic programs, parallelling actions against the teacher-student,the Court builds a two-tiered argument:a broad based "Goss v Lopez" foundation beneath a "Horowitz" house.

Equating teacher-student's expulsion under extreme,unusual circumstances with the "Goss v Lopez" cafeteria suspension,the Court rules that the 9 Apr 92 JSCED "meeting",by evidence before the Court a meeting as eclectic and non-substantive as the "appeals process", provides the minimum protections afforded students upon suspension per "Goss v Lopez." Ignoring the Vermont Regulations mandating a maximum process for a 10+ day "suspension", the Court accepts the Defendants' claim that no appeals process existed prior to expulsion, and that the de novo, instant "appeals" creations of Carpenter, Sutherland and Crockenberg fulfills the "less stringent" procedural standard of "Horowitz" regarding academic dismissals.Almost in passing, the Lamoille Court, again in error,states that the teacher-student's JSC Presidential "final appeal" is still pend-ing, 170 days post finis, on file with Court 6 July 1993.Teacher-student appeals the Vermont Supreme Court, citing gross errors above.Specifically,the appeal focuses on talismanic reliance of the Lower Court to accept governmentally

controlled labels absent evidential support.
In refuting "Goss v Lopez" authority,the "...some sort of hearing..." standard, teacher-student notes that while the College and the High School both now claim to have suspended the student, neither have provided a scintilla of chargeable allegation which is not teflon coated, nor have either the College and the High School made any remedial effort which meets the more stringent requirements the U.S. Supreme Court regarding EXPULSIONS of a speedy, summary and unusual nature.
The "Horowitz" cite,argues the teacher-student, has failed because 1) the JSCED/SHS internship apprenticeship monitoring is grossly negligent to the point of fiduciary fraud;,2)the instant, de novo "appeals" creation DID NOT aid the student remedially, that appeal does not deconstruct to suffice for the total absence of academic remediation, and thus the "instant" "appeals process" is punitively an ex-post facto mechanism,3)that the prerogative of academic expertise is voided by the actual powers deciding the accused fate, the non-academic, le-

gally esoteric "Regent", now "4th Defendant" Attorney Sutherland, a "third party participant",and finally, just as predicted in his partial dissent in "Horowitz", 4) Thurgood Marshall's worst nightmare, the Constitution trampled by conflicted administrators, who, in full control of the labels,dictate procedure to the disservice of truth,scholarship and justice, has finally come true in Vermont. (Vermont Supreme Court, hereafter VtSC,Appellants' Brief, Momorandum of Law, Statement of Issues, Brief Case Description,Oral Argument) In oral argument before the Vermont Supreme Court,10 May 94, the teacher-student, disregarding factual presentation, facts which the Court supposedly was quite knowledgeable of, appealing to law references, as directed by the Clerk of the Court, presented a case of governmental bills of attainder supported by ex-post facto regulation within a label-clad ersatz academic due process. Disciplinary measures, not esoteric academic behaviors, claimed the teacher-student, explain the speedily rendered decisions and disjunctive

appellant aberrations which comprise the evidence in the case file.

Defendant Sutherland replied with a rambling mini-discourse of the history of the case, and then was asked by one of the Justices two (2) questions.

To the first, regarding a "...fleshing out..." of the "grading incident" at the High School, Sutherland notes a simple disagreement over grading practices.

To the second question:"Did the College investigate Mr. Lucas' allegations regarding Dr. Wilgoren?", Sutherland replied "...uhhh... not really, the College was more interested in the method Lucas used to file the allegations."The "Patterson-Amsden" memo of 1 May 92, de-tailing a High School Guidance Department investigation of both OFF CAMPUS and on cam-pus teacher-student and SHS student behaviors, an investigation conducted April 16-27, 1992, conjunctive with a meeting at the High School 27 April 92 called by Patterson and attended by BOTH SHS and JSC employees, sat in the evi-dence file (VtSC Exhibit 5), known to Sutherland and supposedly the Court, which

both seemed satisfied to separate SHS from JSC, thus avoiding a perjury trap in Sutherland's oral denial of JSC investigation of the "grading incident"re: the 1 May 92 Paterson Memo.

The Vermont Supreme Court ruling of 15July94 echoed this sentiment. Conspicuous in it's absence is any Supreme Court mention of the Lower Court's "Goss v Lopez" as foundation, a foundation without which the LaC "Horowitz" house falls. In its stead, the Vermont Court questioned the contractual rights of a fee-paying Graduate Student in a state-promoted, state-supported, state-sponsored, state regulated by law licensing program.

In following, the Higher Court equated the "less stringent" "Horowitz" standard with the Defendants' oleaginous, eclectic pro-forma process,disregarding large gaps in evidential fact and contiguous logic.

The Lower Court's broadbrush assertion of the Defendants' compliance with ALL 1 VSA 315-320 records requests, the outstanding 16 VSA 12 : Oaths omission not withstanding,was duly certified by the Vermont Supreme Court.

Finally,the Court stated that teacher-student allegations of governmental conspiracy were too thin to accept.

Teacher-student filed, as allowed, for re-arguement,refuting the disjointed contractual argument of the Court, and detailing the "4th" Defendants' control of the Graduate Committee and Academic Dean Appeals decisions, decisions minimally written on the computer network of the "Regent" attorney Sutherland, and bearing,by all accounts, material not attributable to their nominal authors,esoteric experts Drs. Towner and Crockenberg.

Teacher-student contiguously filed a discovery motion seeking the 16 Mar 92 "draft letter" acknowledged by Sutherland to be his creature, a "draft letter" which is unrefuted by and personally represented to teacher-student by Sutherland to be identical to the 23 Mar 93 "Academic Dean Appeal Decision." Also sought was the line item billing of Sutherland and Collins submitted and paid the firm by VSCC during the administrative construction and actual conduct of the JSC de novo,ad hoc "appeals

process" PRIOR to constructive legal action by the teacher-student.

The Vermont Supreme Court rejected these motions for re-argument, sending the matter to the U.S. Supreme Court on appeal.

Federal Questions: Time and Content Requirement:When Raised, Method,Disposition

Not all process on the campus is Academic Due Process. What emerges from the campus is the product of the process utilized.When frauds, deceptions and devious constructions emerge from the campus, this is evidence that the process, though "academic", is ersatz.

When genuine Academic Due Process is employed, what emerges from the campus is the truth. Genuine Academic Due Process sifts facts and evidences, relies on myriad testimonies and affidavits, and with discipline measures accurately and fairly.When theory is proposed, the theory,or thesis,is a testable quantity that the Academic Due Process subjects to substantial,intense testing.To treat theory otherwise would elevate the campus to cathedral.

The same sifting of facts, evidences, testimonies, fairly and judiciously measured and weighed, either supports or rejects, partially or wholly, the testable thesis.

What is before the Court is not an anarchistic student attack on the genuine prerogatives of disciplined scholars and their precise ministerial measures.
Rather, the matter before the Court is a defense of the Academic Due Process by a perhaps over zealous teacher-student decrying faux scholarship and fraudulent measures.
The record shows that the Federal Questions before the Court were timely, concretely posed, in a substantial manner, on the JSC Campus.
The record shows that the campus authorities abjectly avoided and universally avoided comment on any of the issues.

The first question of fair measure was an unresolved 1st Amendment question regarding philosophical screening disguised as "English Competency",thus both Free Speech and Grievance issue.There was no response to these issues.
The 1st Amendment question of Free Assembly, as well as the 20 USC 1232 h issue,arose when the High School, SHS, investigates off campus, off hours student activities AS IF these are

jurisdictionally extra-curricular school functions.The campus authorities concealed this investigation, and avoided discussion.

"Star-Chamber " processing, at JSCED and SHS Guidance, where students, presumptively under academic rules, must answer questions and surrender documents and notes, while the inquiring authorities behave as a super empowered Grand Jury, exempt from response, are the campus 4th and 5th Amendment incidents. Campus authorities call this academic prerogative.

The entire "ersatz" academic process, at JSC and adjunct placement site SHS, where genuine empirical measure was corrupted, arbitrarily and capriciously, and then published as the result of genuine scholarship,that is,report card grades, of this teacher-student and his history students,and the concomitant theft of student intellectual labors, are the 6th and 14th Amendment issues on campus.Campus authorities call this academic prerogative.

The predisposition to pre-measure outcomes, and to adjust standard measures to meet expected outcomes, on both campus', is the Constitu-

tional Issue at Article 1, Section 9:Bills of Attainder and Ex-post Facto Regulation.Again the academic prerogative of the scholars measuring,say the authorities.

This focus on outcome regardless of input, with the genuine fruits of intellectual labors denied and denigrated, a measure of punishment rather than reward, is also the genus of the 8th Amendment fouls on campus. Academic prerogative says the JSC President. 20 USC 1232 g FERPA "Buckley Amendment" issues,also 34 FRC 99 empowering FERPA regulations, were raised on campus in the JSCED "expulsion" order.The prerogative of scholars. Converting graduate interns from student-apprentices into long term, unpaid, involuntary Graduate Assistant "substitute" teachers, who labor for other, licensed teachers collecting regular as well as supervisory pay but completely neglectful of their regular and supervisory duties, is the prerogative of the licensed class, claim the campus authotities. This teacher-student contends that these actions are no more than a gross violation of the 13th Amendment of the Constitution, and

involve issues of 20 USC 1097 violations regarding Federal Student Loan Fraud.
The immoral academic "prerogatives" of the JSC and SHS educational experts with esoteric, specialized academic knowledge now certified as primal by the Vermont Courts under the "Horowitz" standards, are no more viable nor less excused than the flawed,legal expertise of the campus attorneys, Carpenter and Sutherland,in their total disregard for the Federal standards found in "Keyishian" and post-"Keyishian" Supreme Court rulings.

The "Keyishian" and following Court rulings were injected by the teacher-student immediately post Graduate Committee "hearing", through the teacher-student complaints to the Vermont Attorney General's Office, which forwarded these complaints to Attorney Carpenter, and presumeably Sutherland as well.Carpenter has,in a submitted affidavit,denied that this report,now Appendix XII in the record, was forwarded to him.(1 July 93; LaC)

Additionally, the issues brought to the supposed Constitutional Officers/Scholars, per their 16 VSA 12 Oaths, all issues involving genuine academic processes that the scholars, by dint of the knowledge and expertise,knew or should have known involved Federal Issues, are not exclusively the purview of legal experts Sutherland and Carpenter.That educational leadership "experts" Page and Tilley,the latter an instructor of seasoned licensed teachers seeking higher level licenses,and Dr. Story,as the chair of JSCED, were ignorant of the Federal Issues,and thus innocently avoided Federal Issues,can not be accepted by the Court.Dr. Tilley agreed to meet with teacher-student by 27 Apr 92,a meeting Tilley never called.Rather,on 27 Apr 92,Drs. Page and Whiting are terminating the "suspension" at SHS, ex-officio, in camera.Genuine Academic Due Process did not fail on the JSC campus in these instances. The abject avoidance of, flight from and feigned ignorance of the substance of the issues demonstra-tes that the discipline succeeded. Each time the JSC authorities paste "prerogative" over their fail-

ures to delicately and sensitively consider facts and evidences, the teacher-student wins the point,thus resuscitating Academic Process and Academic Freedom.

What passes to the Vermont Courts is but the chronicle of truth subverted by pretentious prerogative.The "ersatz" process was designed to stand before the Courts, and thus far has. The purpose of this clever design is to shield the JSC scholars from a genuine process which would force the scholars-in-charge to face and admit their academic, civil and criminal liabilities.

At this point, the VtDoE 4300 processes regarding "unusual" suspensions, very "long suspensions", and/or the JSC Code of Conduct Academic/Disciplinary process, both highly adversarial and comprehensive, are past due.

A "simple" Access to Public Documents action brings the "ersatz" process off campus and to the Courts. At the Superior Court (LaC) level,the initial summons, teacher-student's memorandum of law, deflection of early dismissal motions, oral argument, supplementary brief and motion to secure documents all point

to the Federal Issues first raised on the campus.

When the Defendants said the "magic phrase", "...this is a grading dispute, not a disciplinary matter...",LaC reverted to "Horowitz" poste-haste, fashioning backwards a Federal reasoning that would allow the College,bound by contracts to have WRITTEN procedures for summary expulsions, to escape from answering under 1 VSA 315-320 the questions the College had not answered on campus.

Additionally,LaC granted liberal construction, under 1 VSA 315,not to the citizen seeking the written processes,but rather to the government, excusing even records under request, and still outstanding, but not under suit.

Thus the Federal Questions passed to the Vermont Supreme Court (VtSC). Here, the pro-se teacher-student, armed with the legal decisions of LaC, could, after research, argue the law.

VtSC rejected the teacher-students voluminous case file, 180+ pages,upon appellee motion, but was still pressed to reverse "Horowitz" and "Goss-Lopez" authorities misapplied by LaC.

Appellant Motion, Issues to be Raised,Momorandum of Law, Supreme Court Exhibits, and Legal Brief all pointed to the flawed reasoning regarding "Horowitz" and " Goss v Lopez" Lower Court constructions.

The oral argument before the Court was specifically to the Constitutional Issues:Bills of Attainder,Ex-post facto Regulation,myriad violations of free,academic discourse Rights promoted by "ersatz academic due process" and strained, attorney manipulated abnormal campus processes.

VtSC affirmed LaC, questioning the contract right of the appellant, upholding "Horowitz" proforma, with a very weak affirmation of the "Goss-Lopez" foundation upon which LaC built its decision.

On petition for re-argument, teacher-student rebuilt the legal contract that binds the parties,from the Vermont Legislature to the Spaulding High classrooms,filing almost simulaneously to acquire the documents from the attorney's files which LaC had failed to secure per the teacher-student's LaC motion.

In denying reargument, VtSC is affirming the actions of JSC and JSCED. It seems to follow that while the Vermont Supreme Court has great powers,it does not have the power to overrule both Article 1,Section 1,of the Vermont Constitution, as well the 13th Amendment of the United States Constitution. The contract that is extant between the State,the College,the High School and the teacher-student is but a Common Law Involuntary Servitude by Performance Contract.

"Horowitz" can not support such a contract.

Signed this day, the 18~~th~~ November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

RESUBMITTED
12/7/94 JL

John Lucas

Amplification for Allowance of Writ of Certiorari

The ethical and moral prerogatives and duties of scholars to measure and grade fairly have been long recognized under the law.The prescription from English Law, that "...In such cases, Boards of Education will have to ascertain the law as well as ascertain the facts" (Anti-fascist v McGrath at 170) echoes the late 19th and early 20th century American legal traditions upholding fair and honest measure in education(6 ALR 1533 et al.)

Fair measure "...is ingrained in our national traditions, and is designed to maintain them." (Anti-fascist v McGrath, at 161.)

Modern Supreme Court and Lower Court rulings, not numerous, none the less uphold the fair measure doctrine within the academic world. The grading process that leads to success also determines failure. Each time a failure has come before the Courts,(Horowitz at 80-81, 92-93 [7,8], 95[3]. 106[21], Gaspar v Bruton at 845-849, Mahavongsanan v Hall at 450[2]), the Courts were afforded the opportunity to examine

students in scholastic decline or failure, and measure, by evidences and testimonies, the actual academic process of calculating the students' defects.(LaC: Plaintiff's Response: Motion for Summary Judgement,Affidavits of Defendants, LaC Exhibit Academic Prerogative; VtSC; Appelant's Memorandum of Law).The academic process is one of gathering the evidences and testimonies and then determining the grade.(LaC:Academic Prerogative; VtSC:Appellant's MemorandumOf Law) The Courts , in determining that the process actually did collect this evidence and testimony, have ruled that the academic process, and the resultant grade, are legal.(VtSC:Memorandum of Law) This case is the reverse "process", an "ersatz academic due process" which simply grades without evidences and testimonies.

Alleging, before the Superior Court (LaC) that the teacher-student had filed "bizarre" requests for records, the College and its attorneys failed to explain why, when the teacher-student initially complained about "19 phantom homework assignments", the educators didn't simply silence the "bizarre" complaint by pro-

ducing either the "19 assignments" and/or the grading sheets of Dr. Wilgoren that reflect -ed the calculations, based on these "assign-ments", "assignments" now so obviously fraud-ulent in their absence from the case and stu-dent files.Absent the grading sheets or the "assignments" themselves, any published meas-ure of perfor-mance is academically fraudu-lent,and thus le-gally suspect.(LaC: Academic Prerogative, VtSC Exhibit 13).Similarly,in the 1 VSA 315-320 Access to Public Documents Suit, the Defendants could have silenced the "bizarre" plain-tiff simply by providing the Court (LaC) with the requested document, the JSC Code of Conduct, in the documents which the Defendants filed in defense of their "aca-demic due process".Surely, if the Code of Con-duct was a "disciplinary code",that claim,a-long with notice in the Code of Conduct to re-fer to an "Academic Due Process Code" would have settled the issue.(VtSC:Appellant's Brief)Instead,Defendants DID NOT provide the Court with a copy of the Code of Conduct,sim= ply stating that they had belatedly sent a copy of the Code, post summons, to the Plain-

tiff-student.(LaC:Plaintiff's Responses to Defendants' Affidavits,Motion for Summary Judgement)Teacher-student supplied the Court with the Code, demonstrating that the Defendants' "academic due process" existed neither in the Code of Conduct nor in the JSC Policy Manuals regarding genuine academic, that is, grade point measured, deficiency or failures. (LaC:Academic Prerogative) Any notion that the teacher-student exhibited "idiosyncratic behaviors" refers to the teacher-student's Constitutional behavior, not some legitimate measure of professional conduct which would materially disrupt the educational process. Failure to remediate whatsoever undermines any claim that this "disruptive behavior" was a manifestation of rebellion outside of structured authority.(VtSC: Appellant's Brief) The Political Educational Establishment has but to put these evidences before the Courts, the "assignments",the grading sheets, the Code of Conduct, and the published grievance procedures (inside the Code of Conduct),having had

numerous entreaties and opportunities to produce said evidences, refuting "bizarre" teacher-student "harassment" of legitimate scholastic measurement and educational authority, and their case is irrevocably made.

Instead, the evidence clearly shows the their "process" is designed and implemented through completion to avoid evidences and testimonies.

In a post-haste refinement of the word "summary", the JSCED expels the student from its Vermont licensing program for his behaviors which resulted in his earlier suspension from the High School, based on an internal "memo of suspension", created, ad hoc, the day AFTER the student is expelled from the College.

Fact: Without notice, charge and opportunity to refute, the suspension is a long term suspension.

Fact:The VTDoE 4300 Regulations require that written notice plus a full adversarial hearing constitute a legal, long term suspension in Vermont.

Fact:A legal,long term suspension in Vermont would mandate a disciplinary hearing on the JSC campus to see if Expulsion is warranted.

Fact:A disciplinary process, under the Code of Conduct, is an adversarial hearing procedure.Fact:No one on the other side has been compel-led to testify, a failure by design of the "ersatz" process, at any time in this case. Fact:The design is successful in concealing the truth.While "...summary administrative procedures may be sanctioned by history or obvious necessity ...these are so rare as to be isolated instances". (Anti-fascist v McGrath at 168)Indeed, the VtDoE 4300 regulations regarding suspensions, built on "Goss v Lopez", allow for emergency suspensions without notice, but mandate that, within 10 (school) days, written notice go to the student AND a hearing occur.The evidences clearly show that not only was the "memo of suspension" internal between the College and High School only, but also that,10 instructional days after the teacher-student is placed on "leave of absence",(7 Apr 92), the College and High School authorities meet(27 Apr 92) secretly at the High School to decide to NOT grade the student for work completed because the student had been expelled 8

school days earlier.That the authorities at this meeting did not discuss,even peripherally, the ongoing High School investigation of the OFF CAMPUS, OFF HOURS meetings of the expelled teacher-student and his former American History High School students, evidence before the Courts, does not follow at all. The genii of this case are the "19 phantom assignments", the summary academic expulsion of a teacher-student whose grade point average mystically plummets from 3.78 (of 4.0) to irremediable failure in less than 30 minutes,without actually lowering the grade point average 1 iota, and the secrecy surrounding all of the evidences involved in the decision making. The Superior Court (LaC), in violation of the liberal construction clause of the Vermont Access to Public Documents Law,accepted proforma the College's statement that all requests by the plaintiff for records had been fulfilled.

Arbitrarily determining that the dismissal was for "academic deficiencies", due process, said the Court, "...negates any concept of flexible procedures." (Goss v Lopez at 577-78).The LaC Court ignored totally the benchmarks available from "Morrissey v Brewer" referenced in "Goss v Lopez", particularly the "Anti-fascist v McGrath" cites two pages later in "Goss v Lopez", stating that "...secrecy is not congenial to truth seeking, and self righteousness is slender assurance of rightness" (Anti-fascist v McGrath at 170, 171-172.)Similarly, the Superior Court failed to examine the font of the flexibility expounded in Goss v Lopez, benchmarks from Morrissey v Brewer as found in Matthews v Eldridge.Three factors, private interest taken by the government, risk of error, and particularly the government's interest in economy, constitute the borders of flexibility.In spite of the government's interest in a minimizing the "...fiscal, administrative burdens...that the additional or substitute procedural requirement would entail" (supra at 335), there is not a hint that the

government is authorized by law to expend additional sums of money on an ad hoc "academic due process" which is no more than an expensive, constantly metamorphose progression of failures to find facts and and self created procedures promoting avoidance of official duties. The Superior Court read "flexibility" where the reality,per the evidences,is motion masquerading as process.

Granting this "flexibility",the LaC Court lectures that this "flexibility" allows for "far less stringent" procedures where academic deficiencies are in question,thus accepting, at face value, the Defendants' meteoric and metamorphosed "appeals" venues, the Graduate Committee and Academic Dean "appeal" steps. Thus, educators who refuse to talk about the Constitution, the High School and Richard Wilgoren, will process the teacher-student under "Horowitz" authority.

The error:The Lower Court equates simple, physical and geographical jurisdiction with academic jurisdiction;since the problems erupted in a Graduate Program,only "expert evaluation" by academic luminaries will fulfill the legal requirements.

The Goss v Lopez "flexibility" doctrine actually mitigates against a separate process burdened by outside legal fees and special, ad hoc committees and procedures, even if an "academic determination" is under consideration.In this case,lack of written suspension notice,summary expulsion using non-sequiturs (there are three charges from JSCED alleging responsibility, not defect),a blank,ungraded clinical grading sheet and a grade point average near perfect 60 days POST expulsion are facts the Vermont Courts failed to balance against Defendant's assertions, and these facts, highly unusual on their face, should have pointed the Courts to the limits of "...some sort of hearing..." and "flexibility" in accepting minimal procedural protections.

"We should make it clear that we have addressed ourselves solely to a short suspension not exceeding 10 days.Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension,something more than rudimentary procedure will be required." (Goss v Lopez at 584).

Granting a "flexibility" in the face of the unusual, summary expulsion, an expulsion lacking even a letter of suspension,the Lower Court (LaC) lectures that the procedural requirements in determining academic deficiencies are "...far less stringent..." than in disciplinary actions, per "Horowitz".

Yet the record before the Court substantially details how the procedure employed by the Defendants could not "...can tuna...", never mind meet the traditional academic definition of a "...precision instrument..." which uses evidences to test theories and hypotheses.

Seeking to explain how the College could violate its Accreditation Contract, mandating "...clear,concise,published and readily available..." procedures regarding expulsions, the Superior Court fashioned its decisions backwards, noting "less stringent" allowing "flexibility", authorizing Defendant Hahn's assertion that no procedure existed, thus allowing the Court's unsubstantiated notion that the Defendants had fulfilled ALL requests for records,when Defendants could not demonstrate that they had provided the Court with a copy of the record under suit, the Code of Conduct. The Lower Court equated genuine scholastic procedure with the Defendants' eclectic,Chinese fire drill while the record shows that the Academic Due Process, and thus the Constitution, were fully ablaze.

Campus jurisdiction,not sensitive consideration of the evidences, is seen by the Lower Court as reason not to look closely at motion disguised as procedure.

The Vermont Supreme Court goes further afield, questioning if a contract even existed between the teacher-student, the College, the High School, and the State of Vermont.Yet before this Court were the State Regulations, based on Vermont legislation , which succinctly explains how non-licensed teachers-in-training may stand before public school students and teach without the license they are training to obtain.Still stranger, with the other cites also before this Court (Gaspar v Bruton at 844, Mahavongsanan at 448, Goss v Lopez at 565,566,and Horowitz at 85, which assumes a property and/or liberty interest),the Court dismisses the argument of the teacher-student that absent the signed contract mandated by Vermont Regulations,which is also the JSC Student Teaching Handbook, page 1 (a record the College can not find), the evidenced performance of the teacher-student at the High School including the grievance over the "19 assignments" is common law proof that the contract existed.Without contractual authority,the Defendants could neither place the teacher-student in the High School, nor decide his fate once he had performed du-

ties at the High School.What the Vermont Supreme Court seemed to say is that the teacher-student was no more than a volunteer,not a Graduate Student compelled by the Graduate Program Requirements, to teach as a supervised apprentice in order to fulfill graduation requirements.

What follows after this,at the Supreme Court level,is a nearly pro-forma repeat of the Superior Court rationales,and an eerie sense of "Horowitz" redux, despite the obvious differences between this petitioner and Horowitz, especially the internal grievance filings which precipitated this expulsion.

Was the High Court in Vermont aware that 13th Amendment consideration were about to come into play?They had all of the facts, which included:1) a grossly unsupervised apprenticeship,2) work completed by the teacher-student for which others were paid, 3) no civic duty requirement demonstrating public need,4)compulsion and coercion by deceit and fraud in presenting the classroom experience as a Graduate Internship,and 5)denial and concealment of complaint and redress avenues.(Bobilin v

v Board of Education, State of Hawaii, 430 F.Supp 1095, 1099-1103).

There is no intent in "Horowitz" to permit involuntary servitude by "...far less stringent..." procedures, nor is this allowable under "...some sort of hearing.." quoted in "Goss v Lopez".The laws clearly require the Courts to delicately examine the actual scholastic circumstances and resultant academic conditions, and to not, pro-forma, accept the barest of minimums unless the circumstances and facts demonstrate that the issues are concomitantly minuscule.

As a citizen of Vermont, I am embarrassed to admit that the factfinding process in the Green Mountain State could have lead to these legally approved unconstitutional conditions.However, as an American, I appeal to the Highest Federal Court seeking redress of these errors.

Signed this day, the 10th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

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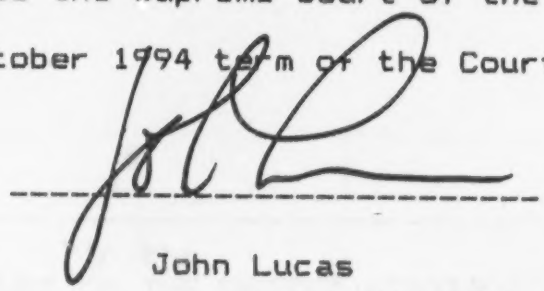

John Lucas

I Hereby certify that on this date, the 21st of November, 1994,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures, four (4) copies of this Writ of Certiorari, plus and additional copy, five (5) in all,to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service,Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing address of the Agent of Record of the Defendants,the law firm of Sutherland and Collins, P.C.

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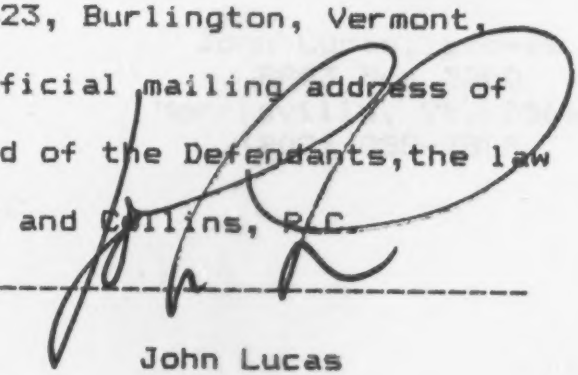

John Lucas

No.

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College, Johnson, Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

APPENDIX TO WRIT OF CERTIORARI

John Lucas, pro-se
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Morrisville, Vt. 05661
(802) 888-2815

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VT Supreme Court
FILED AT CLERKS OFFICE
AUG 23 1994

ENTRY ORDER

SUPREME COURT DOCKET NO. 94-015

MAY TERM, 1994

John Lucas	APPEALED FROM:
V.	Lamoille Superior Court
Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont	DOCKET NO. S0077-93LaC

In the above entitled cause the Clerk will enter:

Appellant's motion for reargument, filed July 29, 1994, fails to identify points of law or fact misapprehended or overlooked by this Court. The motion is therefore denied.

Appellant's motion for discovery is essentially an untimely motion to reargue. See V.R.A.P. 40 (motion to reargue must be "filed within fourteen days of entry of judgment"). The motion is therefore denied.

BY THE COURT:

"S/ FREDERICK W. ALLEN"
Frederic W. Allen, Chief Justice

"S/ ERNEST W. GIBSON III"
Ernest W. Gibson III Associate Justice

"S/ JOHN A. DOOLEY"
John A. Dooley, Associate Justice

"S/ JAMES L. MORSE"
James L. Morse, Associate Justice

"S/ DENISE R. JOHNSON"
Denise R. Johnson, Associate Justice

[ ] Publish

[ ] Do Not Publish

SUPREME COURT OF VERMONT

July 15, 1994

John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Mike J. Harris, Esq.

Re: No. 94-015, John Lucas v. Dr. Robert Hahn, et al.

The Supreme Court handed down its decision in the above-captioned case on July 15, 1994

Pursuant to V.R.A.P. 45(c), I enclose a copy of the Opinion and Entry Order.

Very truly yours,

"S/LARRY ABBOTT"
Larry Abbott
Deputy Clerk

LA/pb

Enclosures

2

ENTRY ORDER

SUPREME COURT DOCKET NO. 94-015

MAY TERM, 1994 VERMONT SUPREME COURT FILED IN CLERK'S OFFICE JUL 15, 1994

John Lucas V. Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont	APPEALED FROM: Lamoille Superior Court DOCKET NO. S0077-93LaC

In the above entitled cause the clerk will enter:

Affirmed.

FOR THE COURT:
"S/ Frederic W. Allen"
Frederic W. Allen, Chief Justice

Concurring:
"S/ Ernest W. Gibson"
Ernest W. Gibson III, Associate Justice
"S/ John Dooley"
John Dooley, Associate Justice
"S/ James L. Morse"
James L. Morse, Associate Justice
"S/ Denise R. Johnson"
Denise R. Johnson, Associate Justice

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE
JUL 15, 1994.

No. 94-015

John Lucas

V.

Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont

Supreme Court

On Appeal from
Lamoille Superior Court

May Term, 1994

Alan W. Cook, J.

John Lucas, pro se, Morrisville, plaintiff-appellant

Michael J. Harris and Paul K. Sutherland of Sutherland & Collins, Inc., Burlington, for defendants-appellees

PRESENT: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

ALLEN, C.J. Plaintiff John Lucas appeals the summary judgment granted to defendants on claims arising from a decision by Johnson State College (JSC) not to recommend him for licensure as a teacher. We affirm.

Until the Spring of 1992, plaintiff was a graduate student enrolled in the education program at JSC, pursuing certification as a high school teacher. As part of the program, he was teaching a history class at Spaulding High School in Barre. A dispute over grades arose between plaintiff and his supervising teacher, and plaintiff, believing that the supervisor had wrongfully lowered many of his students' tentative grades,

sent letters to that effect to the supervising teacher and the students involved. On April 9, 1992, plaintiff met with three professors from the JSC education department to discuss the incident. Following this meeting, the department representatives informed him by letter of their finding that he had not adhered to policies outlined in JSC's Student Teaching Handbook 1991-92, which pertained to confidentiality and compliance with host-school regulations. They decided that plaintiff would not return to Spaulding, would not have further student teaching placements, and would not be recommended for licensure by JSC. The letter also notified plaintiff of the availability of an appeal to the Dean of Academic Affairs. Plaintiff appealed the decision to the education department, the graduate committee,the academic dean, and JSC's president, all of whom affirmed the decision to remove plaintiff from his position at Spaulding and the licensure aspect of the master's program. However, plaintiff was allowed to remain in the program to earn a master's degree in education.

In the course of his JSC appeals, plaintiff filed numerous requests for documents with the school, and JSC responded either with the requested documents, a request for clarification, or notification that the requested documents did not exist or were otherwise unavailable. Plaintiff continued to file requests, many of which JSC considered reformulations of earlier requests.

In March 1993, plaintiff commenced an action alleging violation of SS 316 and 318 of Vermont's Access to Public Records Act, 1 V.S.A. SS 315-320, requesting attorney fees and litigation costs pursuant to S 319(d), and penalties pursuant to S 320. Plaintiff further alleged that JSC failed to

afford him due process in removing him from the teaching licensure program Defendants successfully moved for summary judgment on both claims, and plaintiff appeals.

To prevail on a motion for summary judgment, the moving party must demonstrate both the absence of genuine issues of material fact and entitlement to judgment as a matter of law. V.R.C.P. 56(c); Murray v.White, 155 Vt. 621, 628, 587 A.2d 975, 979 (1991). In determining whether an issue of material fact exists, the party Opposing the motion receives the benefit of any reasonable doubts and inferences, Pierce v. Riggs, 149 Vt. 136, 139, 540 A.2d 655, 657 (1987), but allegations alone do not create issues of material fact, Gore v. Green Mountain Lakes, Inc., 140 Vt. 262, 266, 438 A.2d 373, 375 (1981).

I.

Plaintiff first claims that he was denied due process in JSC's decision to remove him from the teacher licensure program. For the claim to be viable under the Fourteenth Amendment to the United States Constitution, plaintiff Must demonstrate that removal from the licensing and student-teaching aspects of the masters program deprived him of a constitutionally protected "liberty" or "property" interest. Board of Curators of the Univ. of Missouri v. Horowitz, 435 U.S. 78, 82 (1978). "Property interests are creatures of state law," id. at 82; plaintiff's bare allegations of a contractual relationship between JSC and him do not suffice to establish such a property interest. Furthermore, we need not resolve whether he suffered harm to a liberty interest Of constitutional dimension, because we conclude that plaintiff was afforded "at least as much due process as the Fourteenth Amendment requires." Id. at 85.

As a preliminary matter, plaintiff challenges the trial court's conclusion that the decision was based on academic performance. The record shows that plaintiff's handling of the grading disagreement prompted JSC's action, which was based on doubt about plaintiff's ability to adhere to ethical standards and to cooperate with superiors in the school setting. In the context of the licensure program these concerns are valid academic matters, because they rank as important measures of an individuals ability to perform as a teacher. See Lipsett v. University of Puerto Rico, 637 F. Supp. 789, 808 (D.P.R. 1986) (decision to cancel third-year surgery residency, based on conclusion that plaintiff would not make a good surgeon because of inability to follow program's line of authority and desire to do things her own way, was academic decision), rev'd on other grounds, 864 F.2d 881 (1st Cir. 1988); cf. Horowitz, 435 U.S. at 91 n.6 (in determining whether to dismiss a medical student on an academic basis, non-academic factors such as personal hygiene and timeliness may be as important in determining whether a student will make a good medical doctor). In the absence of evidence to the contrary, we agree with the trial court that plaintiff's removal from the licensure program was an academic decision.

The procedures afforded plaintiff before and after the original decision conformed to due process requirements. By its nature, due process comprehends a wide range of procedural protections tailored to myriad situations of state action affecting protected interests. Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). At a minimum, due process mandates that any procedural scheme provide an individual with notice and an opportunity to be heard. Goss v. Lopez, 419 U.S. 5651 579 (1975). An academic dismissal calls for less stringent procedures than would be

mandated for a disciplinary violation. Horowitz,, 435 U.S. at 86. Formal, judicial-type hearings are inappropriate, because "the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making." Horowitz, 435 U.S. at 90.

Plaintiff was given adequate pre-deprivation notice and an opportunity to be heard. He was clearly notified in advance of the reason for the hearing with the three education faculty members. Plaintiff does not dispute that he sent the letters to his supervising teacher and students; he used the informal meetings with JSC staff to explain his actions. Moreover, plaintiff does not contend that he was ignorant of the student-teacher program policies regarding confidentiality, respect for supervisors, and appropriate channels for airing disputes. Therefore, he received adequate notice of the nature of the proceedings and an opportunity to make his case to the individuals empowered to decide his case. JSC made available to plaintiff several levels of review before different members of the JSC faculty and administration, which included opportunities for plaintiff to present his case again. This array of procedures sufficed to minimize the risk of erroneous deprivation resulting from JSC's academic decision. Considering the academic nature of the decision, plaintiff was not denied
due process of law.

II.

Plaintiff's second claim alleges violations of the Access to Public Records Act. In May 1992, plaintiff made requests for documents at JSC concerning procedural and substantive due process accorded

graduate students, criteria for faculty imposition of sanctions on graduate students, and documents regarding the appeals process at JSC. Defendants responded with the Governance and Policy Manual Documents, the Graduate Catalogue (1988-1991), the JSC Catalogue (1991-1993), and the Student Teaching Handbook. Later that month, plaintiff requested copies of all correspondence between JSC and Spaulding High School concerning him, and all internal documentation relating to him and his career at JSC. JSC responded that plaintiff's file would be open to him for inspection, and explained that other documents requested either were being tracked down or did not exist. Between June 1992 and February 1993, plaintiff filed seven additional requests for documents, Most of which repeated earlier requests submitted and responded to by JSC. From March 1 to April 2, 1993, plaintiff filed eighteen separate requests for documents, many repeating prior requests. JSC's attorney had notified plaintiff in a letter dated March 19, 1993, that many of his requests had exceeded the scope of the Public Records Act and that any legitimate requests had been acknowledged either with the document or an explanation that it did not exist or was beyond JSC's control.

Pursuant to I V.S.A. S 316(a), "[a]ny person may inspect or copy any public record or document of a public agency." The custodian of the public record must "promptly produce the record for inspection," unless the record is exempt from production or does not exist. Id. S 318(a)(2), (4). The trial court concluded that JSC had complied with plaintiff's requests, and the evidence supports that conclusion. The record shows that JSC attempted to meet plaintiff's reasonable requests in good faith. Defendants provided plaintiff with full access to his academic files at the JSC Education

Department, and either supplied other documents requested or explained why they would not be produced. We have reviewed the document requests independently, and conclude that JSC discharged its obligations under the Public Records Act. Plaintiff suggests a conspiracy to keep relevant information from him, but offers nothing more than allegations to support his theory. This does not suffice to establish a genuine issue of material fact, and, on the facts adduced, defendants are entitled to judgment as a matter of law.

Affirmed.

FOR THE COURT:

"S/ FREDERICK W. ALLEN"

Chief Justice

Form No. 419
Document Enclosure Letter

STATE OF VERMONT

Date
Nov. 29, 1993

To: JOHN LUCAS
PAUL K. SUTHERLAND, ESQ.

Re:

State V. Defendant Docket No. S0077-93LaC

In re:

Plaintiff John Lucas vs. Defendant Dr. Robert Hahn, et al

_____ Enclosed is a conformed copy of the Judgment Order in the above-named case.

XXX Enclosed is a copy of the Findings and Order in the above-named case.

_____ Enclosed is a certified copy of the document in the above-named case which you requested. Certified copy fee is $ Your check should be made payable to:

_____ Enclosed is the following:

Very truly yours,

"S/ Lorraine M Swetzer

Court Clerk

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State of Vermont
Lamoille County, SS.

JOHN LUCAS

V.

DR. ROBERT HAHN, DR. VINCENT CROCKENBURG, STANLEY CARPENTER & JOHNSON STATE COLLEGE

LAMOILLE SUPERIOR COURT
Docket No. S0077-93LaC

FILED
NOV 29 1993
Lamoille Superior Court
HYDE PARK, VERMONT

DECISION AND ORDER

This matter is before the court on defendants, motion for summary judgment. Plaintiff, appearing pro se, has alleged violations of 1 V.S.A. 318, specifically that he was denied access to the Johnson State College Code of Conduct for the 1991-1992 school year. He also alleges that noncompliance with requests made pursuant to 1 V.S.A. 318 entitle him to relief under I V.S.A. 319, including reasonable attorney's fees and other litigation costs. In addition, plaintiff requests penalties be assessed against defendants pursuant to 1 V.S.A. 320. Based on the voluminous pleadings, we conclude plaintiff has raised two issues before this Court. The first is whether the college responded appropriately to plaintiff's varied requests in accordance with the law and second, whether he was terminated from Johnson State College with due process protections.

To begin, we note that plaintiff was a graduate student enrolled in the education program at Johnson State College. As a requirement to receiving his certification, he was placed as a student teacher at Spaulding High School. A dispute arose over grades between plaintiff and his supervising teacher at the high school which led to plaintiff's ultimate suspension from student teaching

by the Spaulding High School administration. Based on this incident and plaintiff's alleged academic deficiencies, plaintiff was terminated from the student teaching program at Johnson State College. It is this termination which is the focus of dispute between the parties.

Summary judgment is appropriate only where the moving party establishes there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. V.R.C.P. 56(c); Murray v. white, 155 Vt. 621, 628 (1991). Where pro se pleadings are involved, indicating that there may be genuine issues, a court should be hesitant to grant summary judgment. Bingham v. Tenney, 154 Vt. 96, 101 (1990). This is all the more the case when deficiencies in a pro se party's filings seem to go to form, rather than substance. Id.

Access to public records and documents is authorized under I V.S.A. 316("(a) Any person may inspect or copy any public record or document of a public agency . . .") Upon request, the custodian of the document must promptly produce the document for inspection or state the reasons for denial of access if the record is considered exempt. 1 V.S.A. 318. Plaintiff filed extensive requests for documents with defendants pursuant to the access to public records provisions regarding his procedural due process rights and information that he claimed was necessary to protect those rights. Upon reviewing plaintiff's requests for documents[1] and defendants, responses to such

[1] Plaintiff's requests for documents began in May 1992, demanding inspection of records at Johnson State College establishing the substantive and or procedural due process accorded to graduate students, documents pertaining to the criteria by which faculty members may impose sanctions upon graduate students, and documents regarding the appeals process at Johnson State College. In response, defendants submitted the Governance and Policy Annual Documents, Graduate Catalogue (1988-1991), Johnson State College Catalogue (1991-1993), and the Student Teaching Handbook. See Response Letter dated May 20, 1992 from Dr. V. Crockenburg, Dean of Academic Affairs. By April 1993,

requests[2] we conclude defendants complied with plaintiff's requests in accordance with the law. Plaintiff has received the Johnson State College Code of Conduct and has not indicated what documents, if any, that defendant withheld. Based on the foregoing, we conclude that defendants are entitled to judgment as a matter of law. We therefore decline to award any fees to plaintiff or to assess any penalties against defendants.

We now turn to plaintiff's second contention, the denial of due process. On April 9, 1992, plaintiff met with three professors of the Education department at Johnson State College. Based on that meeting and plaintiff's suspension from Spaulding High School, the Education Department concluded that plaintiff was to be suspended from student teaching without any further student teaching placements and he would not be recommended for licensure as a teacher by Johnson State College. We conclude that plaintiff's dismissal from Johnson State College was based on academic performance. See Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 55 L.Ed. 2d 124 (1978).

Due process, by its very nature, "negates any concept of inflexible procedures." Goss v. Lopez, 419 U.S. 565, 577, 42 L.Ed. 2d 725, 737 (1975). Where the dismissal is based on academic deficiencies rather than disciplinary violations, the amount of due process required is far less stringent. Horowitz, supra at 86, 55 L.Ed. 2d 133.

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extensive requests for documents had been made upon defendants ranging from requests for test scores administered as part of plaintiff's teaching placement, evaluations of his performance by plaintiff's academic supervisors, notes of conversations between professor involved in plaintiff's student placement at Spaulding High School, and travel logs for faculty members supervising field placements of graduate students.

[2]Defendants' responses to plaintiff's demand for inspection of records was also documented throughout the extensive pleadings. Defendants either produced the requested document, explained if such document was not in their control, or if such document did not exist.

> Academic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact finding proceedings to which we have attached a full hearing requirement. In Goss, the schools decision to suspend the students rested on factual conclusions that the individual students had participated in demonstrations that had disrupted classes, attacked a police officer, or caused physical damage to school property . . . The decision to dismiss respondent, by comparison, rested on the academic judgment of school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal.

Horowitz, Bupra at 89, 55 L.Ed. 2d 134. In essence, academic dismissal requires an expert evaluation of a student's progress, a decision courts are not readily adapted to make. Id. Based on the foregoing, it is clear that an adversary hearing is not required in situations of academic dismissal. As long as minimal protection are in place whereby the student is informed of any such inadequacies, then due process will be met. As indicated throughout plaintiff's requests for documents, Johnson State College did not have any formal records setting forth substantive or procedural criteria providing due process to graduate students. See Letter dated September 3, 1992 from President Robert Hahn to John Lucas. However, the Education department was vested with the authority to monitor graduate students involved in student teaching. Any decision rendered by the Education department could be reviewed by the Graduate Committee, with further opportunity to appeal any adverse decision to the Dean of Academic Affairs, and then the President. The procedures in place at Johnson State College provided plaintiff with an informal hearing with the Education Department in which plaintiff was afforded an opportunity to present his version of the incident that occurred at Spaulding High School. Plaintiff then appealed the decision of the Education Department to the Graduate Committee, and was permitted two

appeals to the Dean of Academic Affairs. He currently has an appeal pending with the president of the College. Since a formal adversary hearing is not required where dismissal is based on academic performance, we conclude that the meeting with the Education Department as well as the appeals process of which plaintiff has availed himself provided plaintiff with sufficient due process.

ORDER

Defendants, motion for summary judgment is hereby GRANTED.

Dated at Hyde Park, Vermont, this 29th day of November, 1993.

"S/ALAN W. COOK"
Alan W. Cook
Presiding Judge

cc: John Lucas, Pro Se
Michael J. Harris, Esq.

JOHNSON STATE COLLEGE
JOHNSON, VERMONT 05656

EDUCATION DEPARTMENT

October 22, 1991

Mr. John Lucas
RR3 Box 3280
Morrisville, VT. 05661

Dear John,

I am sorry to inform you that you did not pass the Education Writing Competency Examination at this time. Your writing was well done; however, the readers felt that you had not addressed the question as to your personal philosophy of education.

Please contact me as to a rewrite date within the next two weeks.

Sincerely,

"S/PATRICIA A. EYLER"

Patricia A. Eyler
Assistant Professor

JOHNSON STATE COLLEGE
JOHNSON, VT

April 9, 1992

EDUCATION DEPARTMENT

John Lucas
RR #3 Box 3280
Morrisville, VT 05661

Dear John:

On April 9, 1992, you met with Dr. Carol Story, Dr. Marilyn Page and Dr. Herb Tilley to discuss an incident that occurred when you were student teaching at Spaulding High School, This incident resulted in Spaulding High School suspending you from completing student teaching.

After hearing your perceptions and reading a document titled: History, 4th Period, Midterm Grades—AKA Soc 419-U. S. History "B", written by you, decisions were made based on the following rationale:

I . You did not follow the confidentiality policy stated in the Student Teaching Handbook, 1991-92, p. 43. In part, it states ... the classroom teacher must be consulted in all matters relating to the sharing of student information. Without any knowledge of or approval from the classroom teacher or principal, you sent letters to parents citing student information and naming classroom teachers.

2. Also, it is written in the Student Teaching Handbook. 1991-92. p 27. that you as a student teacher were also responsible for the following:

> "5. becoming familiar with the cooperating school program and policies as well as regulations such as those concerning school calendar, teachers' schedules, faculty meetings, and appropriate dress.
>
> "6. abiding by all cooperating school policies and regulations that apply to student teachers. "

3. You were also responsible for "arranging for at least weekly conferences with the cooperating teacher for planning and feedback purposes" as stated in the Student Teaching handbook, p. 28.

The decisions are:

I . You are required to cease your student teaching.

2. There will be no further student teaching placements.

3. You will not be recommended for licensure as a teacher from Johnson State College.

We recognize that due process is essential and these decisions may be appealed to the Dean of Academic Affairs.

Sincerely,

"S/CAROL M. STORY"
Dr. Carol Story, Department

"S/MARILYN PAGE"
Dr. Marilyn Page, Supervisor

"S/HERBERT TILLEY"
Dr. Herbert Tilley, Associate Professor

/mv
cc: Academic Dean Vince Crockenberg

SPAULDING HIGH SCHOOL BARRE VT

April 10, 1992

Dr. Herb Tillev
Department of education
Johnson State Collece
Johnson, Ver-@3ont

Dear Dr. Tilley:

This letter is provided for your records. It is essentially a restatement of our telephone conversation of April 7, 1992 and outlines the circumstances under which I made my decision to suspend. Mr.. John Lucas who served as a student teacher from January 27 to April 6, 1992.

On April 6, 1992 I became aware of a letter (copy enclosed) written by Mr. Lucas to one of his cooperating teachers, Dr. Richard Wilgoren. The letter addresses a controversy relating-to grading Procedures. I found the letter extremely demeaning to an established professional. Further and more importantly, I learned that Mr. Lucas had not only confrontationally addressed the issue with the cooperating teacher but had, without further recourse to in-house resolution written letters (one example enclosed) to the parents of the students whose grades were in question.

A further conversation with the host cooperating teacher, Mr. Dick Lussier indicated that Mr. Lucas had been strongly advised.not to present the letter to Dr. Wilgoren. Mr. Lussier advised Mr. Lucas to attempt to resolve the matter with the understanding that the cooperating teacher's decision would prevail.

During his stay at Spaulding High School Mr. Lucas displayed great enthusiasm and energy. I believe that he is sincerely interested in teaching. Unfortunately the lack of professional ethics displayed does not allow me, in good conscience, to permit Mr. Lucas to continue as a student teacher at Spaulding High School until a meeting with you and Mr. Lucas has been held. Please arrange this meeting.

Please feel free to call me at 476-4811.

Sincerely,

"S/ KAY PATERSON"

Kay Paterson
Principal

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JOHNSON STATE COLLEGE
JOHNSON VERMONT

June 2, 1992

OFFICE OF THE
ACADEMIC DEAN

Mr. John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

Enclosed please find a copy of the Graduate Committee's recommendation to the President in connection with your appeal heard on May 28, 1992.

In addition, I have today received your letter of May 30, 1992, which letter contains a request for another meeting with the Graduate Committee to further consider the action of the Education Department and to involve Dr. Page in the proceedings. I have shared your request with other members of the Graduate Committee, and it is our decision that the Committee recommendation to President Hahn would not be affected by further consideration or inquiry. Your request is therefore denied.

Sincerely,

"S/DANIEL TOWNER JL"
Professor Daniel Towner
Chair, Graduate Committee

498g.ltr
Enclosure
cc: Robert Hahn, President
Vincent Crockenberg, Academic Dean
Carol Story, Chair, Education Department
Alice Whiting, Member, Graduate Committee
James Black, Member, Graduate Committee

2 June 1992

TO: Robert Hahn, President
FROM: Daniel Towner, Chair, Graduate Committee
RE: may 28 meeting with John Lucas

I am directing this memo to you in accordance with Section 8.7 of the Johnson State College Faculty Governance Policy and in the absence of the Academic Dean.

On May 28, the Graduate Committee met with Mr. John Lucas and Dr. Carol Story in order to hear Mr. Lucas's appeal of the Education Department's letter of April 9, 1992, signed by Professors Story, Tilley, and Page, terminating his student teaching practicum and taking other specific action. Mr. Lucas asked the Graduate Committee to go on record as disagreeing with that letter. He did not ask us to change his grade, recommend a second practicum, recommend certification, or to take any other more specific action.

During the course of the meeting, it became clear to us that an incident did occur at Spaulding High School which caused the school administration to suspend Mr. Lucas's student teaching. As a result, the Education Department took action as described in its letter of April 9, 1992. At our meeting, Mr. Lucas admitted the occurrence of the incident, but justified his behavior on the grounds that he was mandated morally, by his oath as a U. S. Marine, and by the Fourteenth Amendment to the U. S. Constitution to act in the manner he did.

After repeatedly reminding Mr. Lucas that we were in no position to debate constitutional interpretation and that we had no say about the conduct of a teacher at Spaulding High School, we met and concluded that we had no reason to disagree with the Education Department's letter or with the actions taken by the Department.

cc: Mr. John Lucas
Dr. Vincent Crockenberg, Academic Dean
Dr. Carol Story, Chair, Education Department

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

6 July 1992

Mr, John Lucas
RR 3, Box 3280
Morrisville, VT 05661

DEPARTMENT OF
WRITING AND
LITERATURE

Dear Mr Lucas:

I will do my best to respond to the questions in your letter of June 18.

1. My feeling is that your characterization of the reasons for having a member or members of the Education Department present is in error. It was not the case that 'the Education Department was allowed [my emphasis) to have a single representative,' but that both you and I agreed that having a representative present was desirable. You and I discussed this in a telephone conversation in which I agreed to do what I could to have such a representative present. I said that I would try to accommodate your wish to have Professors Tilley, Story, and Page present. Professor Page's absence or presence would not have constituted 'a modification of a pre- existing agreement.' Dr. Page was asked to attend the meeting mainly as a courtesy to you. The purpose of having a member of the Education Department present was not to provide an opportunity for cross-examination, but to explain procedures. Dr. Page preferred not to attend, and I had no power to compel her attendance, As I recall, I explained in advance that you would not be permitted to bring your own 'witnesses' because, in my opinion, their 'testimony' would be irrelevant. I stand by that decision,

2. A. & C. I have not had an opportunity to listen to the transcript of the meeting, but I recall feeling unsure of what you wanted us to do. You said, I believe, that you simply wanted us to go on record as disagreeing with the Education Department's letter. I asked you at least three times, possibly four times, if there were anything else you wanted. I even listed options—change of grade, a new practicum, etc.—and you indicated that you did not have a list of demands.

3. The Graduate Committee afforded what it felt to be an adequate amount of time to discuss the issues. The Chair of the Committee was more than fair in stopping the clock when there were pauses, giving warnings when time was running short, and extending the length of the meeting beyond the original time limits.

D. The Graduate Committee did not 'affirm the decision of the JSC Education Department.' It simply denied your request to dis agree with that decision. The burden of proof was upon you to show why that decision was wrong.

D[sic]. The Committee did not move into executive session. The Chair asked non-members to leave, and everyone complied.

E. No notes, records, or tapes of the meeting were kept after non-members left.

F. & H. I do not feel at liberty to indicate how individual members voted in either of the decisions made.

G. No notes, records, or tapes were kept in subsequent conversations with Graduate Committee members.

Please let me know if there is other information I can provide.

Sincerely,

"S/ DANIEL TOWNER"

Daniel Towner, Chair
Graduate Committee

cc: Dr. Vincent Crockenberg, Academic Dean

LAW OFFICES
SUTHERLAND AND COLLINS P.C.

December 4, 1992

John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

Your letter of November 27, 1992 has been forwarded to me for response.

Your letter of October 15, 1992 cites the Johnson State College Student Code of Conduct in charging Johnson State College faculty members and administrators with violations of your rights. The Student Code of Conduct, however, is not intended to be used as a means for students to address grievances against members of the faculty or administration. As is apparent from the introductory language to Chapter V, the code is a standard for student conduct.

While the grievances you state in your October 15, 1992 letter may be different than those you are pursuing through your appeal of the April action of the Education Department, they do arise out of the same incident. In this instance, the redress offered through the academic appeals process is all that College policies have to offer. College policies do not accommodate students wishing to bring disciplinary action against faculty or administrators.

Accordingly, I wish to inform you that the College will not pursue your charges of October

Yours Very Truly,,

"S/PAUL SUTHERLAND"

Paul K. Sutherland, Esq.

cc: Robert Hahn, President
vsc\200

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LAW OFFICES
SUTHERLAND AND COLLINS

: March 19, 1993

Mr. John Lucas
RR3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

President Hahn has forwarded to me your letters to him of March 15, 1993; March 12, 1993; March 11, 1993; March 10, 1993; March 5, 1993; March 1, 1993 and January 30, 1993. Each of these letters contains a formal demand for information, some of which exists and some of which does not exist. In each letter you cite Vermont's public records law as the authority behind your demand. Frequently, however, your demands exceed the scope of the statute. Your letters take on the form of formal interrogatories and requests to produce documentation in connection with pending litigation. In addition to the relatively recent letters I have referenced, my file contains approximately 16 letters from you, written over a period of 8 months, containing demands for information and/or documentation from either President Hahn, Dean Crockenberg or me. Most of your demands have been carefully answered.

You have also had the benefit of an appeals process at the College. In that regard you have met with the Education Department, the Graduate Committee and Dean Crockenberg (twice). As I write this letter, the appeals process is on-going.

The purpose of this letter is to inform you that the current requests for information and documentation will not be answered. Future requests may also not be answered, depending upon their reasonableness. As always, your files, as they exist at the College, are available to you for inspection upon reasonable request. Also, your reasonable requests for copies of materials contained in your files will continue to be honored. I do believe, however, that there is nothing in any of your files at Johnson State College which has not been made available to you pursuant to an earlier request.

I consider your continuing demands for more information to be harassment. The further expenditure of College resources in efforts to be cooperative with you in this regard seems unwarranted.

Very Truly Yours,

"S/ Paul K. Sutherland"

Paul K. Sutherland, Esq.

867g.ltr
cc: Stanley H. Carpenter, Esq.
Robert Hahn, President

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

March 23, 1993

OFFICE OF THE ACADEMIC DEAN

Mr. John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

On April 9, 1992, the Johnson State College Education Department removed you from student teaching and stated that it would not recommend you for teacher licensure. It took this action in response to an incident at Spaulding High School in which you engaged in conduct that, in the judgment of the Education Department faculty, violated the terms of the Student Teaching Handbook. The Department acted following a meeting on April 9, 1992, at which you were present and able to present your view of the Spaulding High School incident.

By Letter of May 21, 1992, to Stanley Carpenter, you appealed the decision of the Education Department to the College Graduate Committee. Following a hearing on May 23, 1992, which you attended and at which you were again able to present your view of the Spaulding High School incident, the Graduate Committee upheld the decision of the Education Department. You were so notified by copy of a memorandum from Daniel Towner, Chairperson of the Graduate Committee, to President Robert Hahn dated May 28, 1992.

By letter of October 21, 1992, you appealed the decision of the Graduate Committee to me. We have now met twice to discuss your appeal: first on January 19, 1993, and then again on February 8, 1993. In connection with those meetings, I have carefully considered your arguments. I have reviewed the written material you submitted to me as well as my own notes from both meetings and the tape recorded transcript of the May 26, 1992 hearing with the Graduate Committee.

I have decided to uphold the decisions of the Department to remove you from student teaching and to deny recommendation for licensure. The decisions of the Education Department faculty, I believe, were reasonable under the circumstances, a proper exercise of their professional judgment, and consistent with their responsibilities to the State of Vermont and to the teaching profession. The Graduate Committee also, I believe, has acted in good faith and in a reasonable manner following its hearing of May 28, 1992.

You are not currently enrolled in any courses at Johnson State College. You stated in the second of our two meetings, however, that you would like to continue to pursue your Master's degree in Education. I have discussed your request with Professor Alice Whiting, Chair of the Education Department, and Dr. Andrea Perham, Associate Academic Dean for Graduate Programs. We are all agreed that you may continue your Master's degree work, but that you will not be permitted to receive a Master's degree with certification, We will instead permit you to complete a Plan of Study for a Master's degree without certification, contingent only upon your willingness to work out an appropriate Plan of Study with Professor Whiting and approved by the Graduate Dean. If you do decide to return to the College, it will also be required that you conduct yourself in accordance with all applicable rules and regulations of the College, just as any other student must do.

I acknowledge that the current College catalogue gives you, as it does all JSC students, the right to repeat any course previously taken in order to earn a higher grade ('91-'93 catalogue, Page 50). The Student Teaching Handbook, however, does have a limiting effect on the repeat option since it requires that every applicant for EDU 470 must receive approval of the faculty in their department to be eligible for placement ('92-'93 Student Teaching Handbook, Page 4). The April 9, 1992 decision of the Education Department is controlling in this matter, and as part my decision in this case I uphold the Department's decision to deny you the right to re-enroll in Practicum 11.

If you choose to appeal my decision in this matter, you may do so in writing to Robert Hahn, the President of Johnson State College. Your appeal must be received by him within thirty (30) days of my decision, that is by April 23, 1993. The President may consider such an appeal in whatever manner he deems appropriate. He may or may not conduct another hearing.

On other matters, you requested in a letter to me dated February 8, 1993, that I help you obtain (1) certain notes of cooperating teacher observations of your student teaching at Spaulding High School, (2) certain notes pertaining to post-suspension interviews of students in your classes at Spaulding High School, and (3) a post-suspension report that you believe we received from Spaulding High School authorities.

On the first matter, the cooperating teacher observations, no Johnson State faculty member either solicited or received any such written observations from any of the teachers you worked with at Spaulding High School. If notes of such observations exist, they remain entirely in the hands of staff at Spaulding. You will have to pursue your inquiries directly with them.

On the second matter, notes pertaining to post-suspension interviews of students in your classes at Spaulding, we have no knowledge of such interviews and we possess no such notes. Again, if these notes exist, they remain at Spaulding High School. You will have to pursue your inquiries directly with them.

On the third matter, the post-suspension report you believe we allegedly received from Spaulding High School authorities, the only report we received is a letter from Kay Paterson, the principal, a copy of which I believe you already have in your possession; in the event you do not have such a copy, I have included a copy for your records.

Sincerely,

"M/ VINCENT CROCKENBERG

Vincent Crockenberg
Academic Dean

/jl

691g.ltr
cc: Robert Hahn, President

Enclosure

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

June 11, 1993

OFFICE OF THE PRESIDENT

Mr. John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

I'm writing to inform you that I have completed my review of your appeal, and on behalf of the College, I am upholding the decision of the Johnson State College Education Department, taken on April 9,1992, removing you from student teaching and stating that it would not recommend you for teacher licensure. In sum, based on my review, it is clear that the College's position in this matter must remain that which was stated in detail in the letter you received from Vincent Crockenberg, Academic Dean, of March 23,1993.

In reviewing your appeal, I have also reviewed the entire process made available to you, and I can affirm that the process has been appropriate and complete. Because this is not an instance where the Student Code of Conduct applies, but is an academic matter, the steps made available to you were the appropriate ones, and the process followed throughout has been correct. In reviewing an appeal of a decision made through this process, the burden of the President is to ascertain that the decision made has not been arbritrary or discriminatory, and does not represent an abuse of power. I have so ascertained.

In conducting this review, I reviewed the letter you sent to Richard Wilgoren of April 6,1992; the eight-page hand-written document you presented to three members of the Education Department on April 9,1992, and asked them to sign; and the letter to you of April 9,1992, from Professors Story, Page, and Tilley, summarizing the incident at Spaulding High School, and informing you of their decisions.

I also met with the same members of the Education Department, and reviewed their meeting with you, and the statements made in that meeting. I also met with members of the Graduate Council, and discussed with them the statements made in their meeting with you of May 28,1992. 1 also met with the Academic Dean, and reviewed with him the contents of your two meetings with him.

I also conducted a detailed review of the entire correspondence between you and various members of the College, beginning in April 1992, and continuing through May 1993. This includes correspondence directed to a wide range of faculty members, and it also includes a variety of materials sent to this office by fax, which appeared to originate from you, since the material was incorporated in your final appeal to me, as well as other materials sent to the College, such as inscribed copies of All the President's Men.

This entire review illuminates numerous circumstances which inform my decision to deny your appeal. Certainly, the original incidents at Spaulding High School were egregious and unacceptable. In addition, in pursuit of your appeal you have not indicated an understanding of the inappropriateness of your actions in these incidents, and you have not acknowledged that you were in the wrong. You have persisted in asserting your unwillingness to accept the reasoned judgment of others in positions of authority. Considering all of these circumstances, I cannot reverse the Education Department's decision.

Any further questions about this decision may be directed to Paul Sutherland, representing the Vermont State Colleges.

Sincerely yours,

"S/ ROBERT HAHN"

Robert Hahn
President

cc: Vincent Crockenberg, Academic Dean
Alice Whiting, Chair, Education Department
Paul Sutherland, Esq.
Stanley Carpenter, Esq.

RH/bls

Bill of Attainder, Ex-post Facto Legislation Clause, Art 1:Sect 9;
Freedom of Speech, Peaceful Assembly,Redress of Grievances Clauses, 1st Amendment;
Unreasonable Search and Seizure Clause, 4th Amendment; Life, Liberty and Property Due Process Clause, 5th Amendment;6th Amendment (Complete);Cruel and Unsual Punishment Clause, 8th Amendment;13th Amendment (Complete);Due Process Clause, 14th Amendment; All of the United States Constitution, as amended
[pgs 43-37]

20 USC 1232 g, The Family Educational Rights and Privacy Act of 1974,(FERPA),The Buckley Amendment [36]

34 Code of Federal Regulation 99 et al;
FERPA Regulations [36]
ss99.2: The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act...

ss99.3(b)(2)(b):this term (records) does not include (1)Records of instructional, supervisory,and administrative and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

ss99.31;Under what conditions is prior consent not required to disclose (recorded) information:(8)The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code;

(12)The disclosure is to the parent of a student who is not an eligible student, or to the student

120 Congressional Record 39, 892 (1974)

20 USC 1232 h, Protection of Pupil Rights

(b) Psychiatric or psychological examinations, testing, or treatment:

No student shall be required, as part of any applicable program, to submit to....psychological examination, testing or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations

(4) illegal, anti-social, self-incriminating and demeaning behavior [40]

Chapter 1, Article 1: [All men born free, their natural rights, slavery prohibited], Vermont Constitution 1777, 1786

That all men are born equally free and independent...;therefore no person born in this country...ought to be holden by law, to serve any person as a servant, slave or apprentice...unless he is bound by his own consent...or bound by law for the payment of debts, damages,fines, costs or the like.

1 VSA 315-320 The Vermont Access to Public Documents Laws [37]

ss315. Statement of Policy: It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter 1, Article 6 of the

Vermont Constitution.Officers of the government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examinations may cause inconvenience or embarrassment...Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as herein provided.To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy

ss316. Access to Public Records and Documents (a) Any person may inspect or copy any public record or document of a public agency...

ss317 Definitions; public agency; public records and documents (a) ..."public agency" or "agency" means ....any political subdivis-ion of the state (b) ..."public record" or "public document" means all papers...or other written or

recorded matters produced or acquired in the course of agency business...

ss 318 Procedure (a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that: ...(4)if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian...

ss 319 Enforcement (a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides...

16 VSA 12 Oaths (1968) [38]

A superintendent,principal or teacher in a public school of the state, or a professor, instructor or teacher who will be employed hereafter by a university or college in the state, which is supported in whole or in part by public funds...before entering upon the discharge of his or her duties, shall

subscribe to an oath of affirmation to support the constitution of the United States of America, the constitution of the state of Vermont, and the laws of the United States of America and the state of Vermont;provided however, that such oath shall not be required by any person so employed who is a citizen of a foreign country.

16 VSA 164 (5), 1692, 1695, 1697, 1792 (a), 1751, and Chapter 59, Vermont Statutes authorizing the Training and Licensing of Teachers (Educators)

Vermont Department of Education Regulations 5100 through 5900 (July 1991)[38]
5100: Statutory Authority (as above)
5200: Definitions:
Approved Program means a teacher education program approved by the State of Vermont

Internship means a graduate experience where one acts as the supervised assistant to a professional whose craft they assume to acquire Supervision means on-site managing and having the legal responsibility for overseeing the work of the paraprofessional, intern, student teacher or volunteer

5234:(Requirements for License):Evidence of one semester of student teaching or an equivalent learning experience

5235.9:Ability to apply current state and federal laws and regulations as they apply to all children...

5235.10:Ability to identify conditions and actions which would tend to discriminate against students on the basis of sex,race, color,creed, age,handicap or national origin and to develop teaching strategies which will overcome those conditions or actions

5500:Teacher Substitutes:...an unlicensed person employed pursuant local school board policy may substitute for up to fifteen (15) days per teacher absence...

5900:Approval of Teacher Education and Continuing Education Programs:

5930 Approval Criteria:Evidence of institutional commitment to high quality teacher preparation including establishment of performance criteria for entrance to and exit from teaching preparation...;Evidence that students know what is expected of them in student teaching and that the faculty and students know what competencies are required for licensure...The placement of student teachers is the responsibility of the institution and must meet the following requirements...on (1) semester (minimum of twelve [12] weeks) of consecutively scheduled student teaching. Students should gradually assume the full role and responsibilities of the classroom teacher...the institution must have a written agreement with the school in which

the student teacher is placed, outlining the responsibilities of each party...;the placement process must be detailed in a student teaching handbook...;The supervision of student teachers by college/ university faculty will meet the following requirements:supervision will be provided by qualified faculty from the regular college staff (this includes graduate supervised field experiences, internships...); college/university supervisors in Vermont intensively observe and advise the student at least once every ten (10) teaching days...A specific student teaching evaluation process is detailed in the student teaching handbook, including the collection of data on student performance...To receive recommendation for licensure, a student teacher must meet the stated competencies...and receive a positive recommendation from the institution with written input from the cooperating field teacher...

Competencies:5440-28 Social Studies:3.Knowledge of teaching strategies particularly important to social studies such as democratic participation and debate;5(c):how to understand and cope with controversial issues, problems and human values...

Vermont Department of Education Regulations 4300 (Disciplinary Actions) Auth 16 VSA 1162 ;4311;

1:[pgs 37-38] In all cases of short suspension from school, which is generally regarded as 10 days or less, the student...shall be given an opportunity for an informal hearing...Except for cases ...(4311.3), the hearing must precede the suspension and the district shall provide:notice of charges,explanation of the evidence against the student; opportunity for the student to tell his... side of the story;decision in writing to the parent guardian.4311.2 In cases of long term suspension which is generally more than 10 days unless the school

district establishes a shorter period, the student...shall be given an opportunity for a formal hearing before the school board and the district shall provide:written notice of the following:nature of the charge against the student, date,time and place of the hearing, right to legal representation, possible penalties involved;opportunity to present evidence,opportunity to cross-examine witnesses, decision in writing...

Vermont Attorney General Report April 30, 1993, Re: Spaulding High School Child Abuse Reporting Internal Processes :"The potential reporting violation was the result of failures of the school faculty and administration to report to the Vermont Department of Social and Rehabilitative services an allegation of a student that a staff member...had inappropriately touched her...Vermont's child abuse reporting law requires that certain individuals, including ...school teachers...report or cause to be reported...information which

gives them reasonable cause to believe that a child has been abused or neglected...The investigation revealed that the effected student reported inappropriate sexual behavior on the part of the school custodian to four separate employees who were mandated reporters under 33 VSA 4913(a).None of these individuals reported the situation to SRS because they failed to recognize this type of conduct as abuse contemplated by the reporting law...The failure of the mandated reporters...was due in part to the lack of clear, written policy... and reporting protocols...The purpose of the law is defeated if concerns such as the unwillingness of the affected child or the fact that a report might break a confidence is allowed to interfere with whether a report is made...The report also revealed that some school personnel felt it was their responsibility to determine which reports by students were true and which were not...If concerns of potential or

future liability prompt a decision to withhold ...that concern should be balanced against the risk to other children such a policy poses, as well as liability if such a risk becomes a reality...The Office of the Attorney General cannot, and does not, condone the manner in which Spaulding High personnel and administrators handled the student report of this matter...

Vermont Child Abuse Law 33 VSA 4912 [Pg 38]

[2]An abused or neglected child means a child whose...psychological growth and development is harmed or is at substantial risk of harm by the acts or omissions of...other person responsible for the child's welfare...(3) "harm" can occur by (A) physical injury or emotional maltreatment...(4) "Risk of harm" means a danger that the child will be harmed by other than accidental means which would be likely to cause...protracted impairment of psychological growth and development...(7) "Emotional maltreatment" means a pattern of malicious behavior which results in impair-

ed psychological growth and development... New England Association of Schools and Colleges "Standards for Accreditation", Commission on Institutions of Higher Education 1992; 4.8:...the institution maintains sole and direct responsibility for the academic quality of all aspects of all programs...4.21 the faculty responsible for graduate programs are sufficient by credentials...4.32 Faculty...responsible for academic advising are adequately informed...4.41 The institution specifies and publishes requirements for continuation in, termination from, or readmission...

6.9 ...Policies on student rights and responsibilities,including grievance procedures,are clearly stated, well publicized and readily available, and fairly and consistently administered.11.4 The institution...has the necessary operating authority for each jurisdiction in which it conducts activities; and it operates within this authority.11.7 The

institution has established and publicizes clear policies...among them are policies and procedures for the fair resolution of grievances brought by faculty,staff or students

Johnson State College Department of Education Student Teacher Handbook 1991-92[pg 36,38,46] Inside Page: Field Placement Cooperating Teacher Agreement (JSCED); I have received a copy of the ...."Student Teaching Handbook"...I accept the responsibilities that are identified for the Cooperating Teacher....in return for my involvement I will receive a tuition waiver for one three-credit course.Cooperating Teacher (Signature Space) Date: (Space) School: (Space) Pg 29 Role of the Cooperating Teacher...4:performs supervisory functions Pg 30 Role of the College Supervisor...2; Visits the student teacher and the cooperating teacher a minimum of eight times during the semester...6;Provides the

student (teacher) with a mid-semester performance evaluation...10;Assigns the final grade after consultation with the cooperating teacher.

Pg 43 Confidentiality:...The requirements of the Buckley Amendment (on the privacy rights of parents and students)make it clear that any information that relates to students with whom student teachers are working is confidential.Student teachers must under no circumstances discuss the educational programs or records of their students with individuals other than those directly or indirectly involved in the educational programming of those students(the classroom teacher must be consulted in all matters relating to the sharing of student information). Student teachers must, under no circumstances discuss the children/adolescents with whom they are working in such establishments as restaurants, bars, grocery stores, or on the street corners etc...."...We believe that the information contained in the students'

education records belongs primarily to the students and/or their parents...(Vermont Policy and Procedures for Educational Records, 1984)...BUCKLEY AMENDMENT PRIVACY RIGHTS OF PARENTS AND STUDENTS (34 CODE OF FEDERAL REGULATION PART 99)

Pg 47 Code of Ethics of the Education Profession...Principle I:...3: Shall not deliberately suppress or distort subject matter relevant to student progress,,, 8.Shall not disclose information about students...unless disclosure serves a compelling professional purpose or is required by law...Principle II...6.Shall not disclose information about colleagues...unless disclosure serves a compelling purpose or is required by law..7.Shall not knowingly make a false or malicious statement about a colleague.

Johnson State College Academic Policies (ACA designation):

ACA 28.2; Appeal of Academic Policies

ACA 32; Academic Dishonesty

ACA 13; Grading System

ACA 6; Graduate Registration

ACA 16; Repeat Course Option

Students may repeat any course which they have previously taken to attempt to earn a higher grade.

ACA 3.1; Course Numbering

STL 2.1; Student Code of Conduct

The Code of Conduct sets forth regulations and policies affecting student life on campus. It details the behavior expected of students ...(JSC College Catalogues)

pg 42"The Code of Conduct applies to all persons enrolled at Johnson State College...

pg 43 K.All forms of ACADEMIC DISHONESTY, including but not limited to -cheating-fabricating-facilitating academic dishonesty and plagiarism [pg 38]

pg 44 P. Violating college regulations and policies...including, but not limited to...

R. Violating federal, state or local law...

DISCIPLINARY PROCEDURES:...F. At any disciplinary hearing, a student will have the opportunity to examine all evience ...present...witnesses or documents...the persons

making the (allegation) statements are made available for questioning by the student ....pg 46 Violations and Sanctions B.(5) Suspension form the college...not to exceed two years(6)Expulsion E. Accessories to acts prohibited by the Code of Conduct may be considered equally cupable with the principal offender.(pg 47)

ACA 53.1; Early Warning (Poor Academic Performance)The early warning process is formally to inform students who are performing poorly academically...during the 5th week of each semester an early warning should be sent to each student...

Academic Dismissal (From the 1988-91 Graduate Catalogue, p22):A graduate student must continue to demonstrate academic proficiency in coursework and must show reasonable progress toward the 3.0 cumulative grade point average required for graduation. Failure to have this minimum...will result in academic dismissal.Students may appeal their dismissal to the graduate council.

"Academic Freedom and Tenure; A Handbook of the American Association of University Professors", ed; Louis Joughin, The University of Wisconsin Press, Madison, Milwaukee and London 1967

"Academic Due Process is a precision instrument; It has a specific applicability or jurisdiction,It operates by established rules; It concerns itself with testable facts, then tests them, It is a demonstration of the human intellect at work, submitting tentative conclusions to comparisons with controls (through the consideration of evidences) and, while moving forward with a particular proceeding, it tests its own working hypothesis by constant reference to the burden of proof" pg 271 [VtSC pg 39]

"Academic Freedom in Our Time", Robert M. MacIver, Guardian Press, NY 1967 [39]

"What are the limitations on the freedom of the faculty?They are the limitations on

independent thought.They can be nothing more than the laws of logic and the laws of the country."pg 223

"Joint Statement on Rights and Freedoms of Students", American Association of University Professors, 1967,1990,1991,1992 [39]

...II In the Classroom B. Protection against Improper Academic Evaluation:Students should have protection through orderly procedures against prejudiced academic evaluation.[4] The student grievance procedures typically used in these matters are not appropriate for addressing charges of academic dishonesty or other disciplinary matters arising in the classroom...students should be afforded the safeguards ...in Section VI below.... Section VI:D:Hearing Committee Procedures...4.The burden of proof should rest upon the officials bringing the charges.5.The student should be given the opportunity to ...present evidence and witnesses, and to hear and question adverse witnesses.

"Statement on Professional Ethics", American Association of University Professors, 1987

V:...professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

P547:Faculty clearly felt that it is far safer to report suspected misconduct by a graduate student than by a colleague.

Barre NEA Teachers Contract 1990-1991

Article 3: Grievance Procedures 3.4(B) Should an informal process fail...then the grievance should be reduced in writing...step 1. the grievant may forward a written copy of the grievance to the building principal...

Barre NEA Code of Ethics (NEA Code of Ethics 1974) See JSCED Student Teaching Handbook Code above [34,38]

Citations of Constitutions, Statutes,or cases relied upon, and copies of pertinent texts of ordinances,academic due processes, reports,publications and other documenta -tion relied upon:

"Bell v Burson", 402 US 535, 541,542 (1971)
"...substance, not bare form to determine whether constitutional minimums have been honored." at 541
"...the hearing must be meaningful, and appropriate to the nature of the case." at 541-2"...a hearing which excludes consid-eration of an (single) element essential to the decision...does not meet (Due Process Clause) standards.' at 542

"Bobilin v Board of Education, State of Hawaii" 403 F.Supp. 1095 (1975) 1103-05
"and while subtler forms of coercion have replaced the blatant methods of subjugation practiced in the ante-bellum South, these

practices are no less effective than their older counterparts." at 1342

"...for a court to conclude that involuntary servitude has occurred: "(1) one person providing work or service for another; (2)under some type of compulsion or coercion."at 1343

"Board of Curators of the University of Missouri v Horowitz", 435 US 78 (1978)

"...determination whether to dismiss a stu-dent for academic reasons requires an expert evaluation of cumulative information..." at 90

"Respondent alleges that the school applied more stringent standards in evaluating her performance than other students..." at 92 [7]

"Respondent contends that the petitioners failed to follow their own rules respecting evaluation of...students....The District Court specifically found that "the progress status of [respondent] in the ...school was

evaluated in a manner similar to other similarly situated students, with the exception that the [respondent's] docent ...went to even greater lengths to assist [respondent] in an effort to obtain her M.D. degree..." 92 [8].

"Considering all of the evidence presented, the Court finds that the grading and evalu-ation system of the ...school was applied fairly and reasonably to plaintiff, but that the plaintiff did not satisfy requirements..." 95 [3]

"...in its assumption that characterizations of the reasons for a dismissal as "academic" or disciplinary" is relevant to the question of what procedures are required by the Due Process Clause." 97

"...Like the traditional disciplinary case, the determination of whether plaintiff did or did not comply with the school regulations is a matter of fact....scholastic standards are not involved,but rather disputed facts concerning whether plaintiff did or did not

comply with certain school regulations" 106

[20]"The Court's reliance on labels, moreover, may give those administrators who are reluctant to accord due process to their students an excuse for not doing so" 106 [21]

"In such cases,a talismanic reliance on labels should not be a substitute for sensitive consideration of the procedures required for due process." 106

"A court's characterization of the reasons for a student's dismissal adds nothing to the effort to find procedures that are fair to the student and the school,and that promote the elusive goal of determining the truth in a manner consistent with both individual dignity and society's limited resources." 107

"Gaspar v Bruton" 513 F 2d 843 (CA10 1975)

" 6 A.L.R. 1533 "

"...their decisions are conclusive, providing that their action has been in good faith and not arbitrary" at 850

"Courts have historically refrained from interfering with the authority vested in school officials to drop a student for failure to maintain prescribed scholastic rating...absent a clear showing that the officials have acted arbitrarily or have abused the discretionary authority vested in them" at 850

"The court may grant relief, as a practical matter, only in those cases where the student presents positive evidence of ill will or bad motive." at 851

"Goss v Lopez", 419 US 565 (1975)

""Disciplinarians, although proceeding in utmost good faith,frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." at 580

"Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him, and if he denies them,an explanation of the evidence the authorities have and an opportunity to present his side of the story."at 581

"We should make it clear that we have addressed ourselves solely to a short suspension, not exceeding 10 days.Longer suspensions, or expulsions for the remainder of the school term, or permanently, may require more formal procedures.Nor do we put aside the possibility that in unusual situations,although involving only a short suspension, something more than the rudimentary procedures will be required." at 584

"Jeffries v Harleston", 828 F.Supp 1066 (S.D.N.Y. 1993), 1068,

"...nor does the Constitution protect the right of professor to teach patently absurd and wholly fallacious theories to class" at 1071

"...with the conduct of the University officials who did not act,then acted for the wrong reason, then were dishonest about their motivations in testimony..." at 1072

"...We conclude that the defense of qualified immunity is not available to the defendants,in that they violated clearly established statutory or constitutional rights of which a reasonable person would have known...' at 1072

"...speech critical of the government is precisely the kind of speech that the first amendment was designed to protect...where the statements involved so clearly touch on matters of public concern, the government is required to demonstrate interference with the efficient functioning of the workplace" at 1087

"[t]he inappropriate or controversial character of a statement is irrelevant to the question of whether it deals with a public concern.[D]ebate on public issues should be uninhibited,robust and wide open, and...may well include vehement,caustic and sometimes unpleasantly sharp attacks on government and public officials.Just as erroneous statements must be protected to give freedom of expression the breathing space it needs, so statements criticizing public policy and implementation of it must be similarly protected." at 1090-91

"The defendants retain the full and unqualified right and responsibility to discipline the plaintiff in response to improprieties or behavior...as long as in doing so the defendants do not violate the United States Constitution." at 1096

"Joint Anti-Fascist Committee v McGrath",341 US 123,168 (1951) "An "appropriate" governmental "determination" must be the result of the process of reasoning.It cannot be arbitrary

fiat contrary to known facts...Where tha act of an official plainly falls outside of the scope of his authority, he does not make that act legal by doing it and then invoking the doctrine of administrative construction to cover it." at 136

"The doctrine of administrative construction never has been carried so far as to allow administrative discretion to run riot." at 138

"This court has never held that... administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution" at 161

"...a fair hearing upon the fundamental facts" at 162

"...summary administrative procedure may be sanctioned by... obvious necessity.But these are so rare as to be isolated" at 168

"The forum itself must be one which is prepared to receive and consider all that he offers which is relevant to the controversy." at 109[16]

"In such cases, the Board of Education will have to ascertain the law as well as ascertain the facts...they must act in good faith ...always giving a fair opportunity to those who are parties to the controversy..."at 170[17]

"The validity and the moral authority of a conclusion largely depend on the mode by which it was reached.Secrecy is not congenial to truth seeking and self-righteousness gives too slender an assurance of rightness."at 171 "Keyishian v Board of Regents", 385 US 589 , 601-603

"The intricacy of the plan and the uncertainty as to the scope of its proscriptions make it a highly efficient in-terrorem mechanism.It would be a bold teacher who would not stay away as far as possible from utterances or acts which might

jeopardize his living by enmeshing him in this intricate machinery." at 580

"Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore of special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." at 603

"The essentiality of freedom in the community of American universities is almost self evident...Scholarship can not flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study, and to evaluate...otherwise our civilization will stagnate and die." at 603

"The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed." at 604

"Klein Independent School District v Mattox", C.A.5 (Tex) 830 F2d 576(1987)

"The Secretary of Education is empowered to enforce the various provisions of FERPA. 20 USC 1232g(f).An educational agency or institution that unlawfully releases a student's records may lose federal funding.20 USC 1232g(b)(1).That is the only express remedy provided by the statute. FERPA neither specifically provides for private cause of action, nor does it legislative history indicate that its drafters intended one." at 579

"...we believe that, under the balancing test, even if she did have an interest it is significantly outweighed by the public's interest in evaluating the competence of its schoolteachers." at 580

"Mahavongsanan v Hall", 529 F. 2d 448 (CA 5 1976)

"Misconduct and a failure to attain a standard of scholarship can not be equated" at 450"Matthews v Eldridge" 424 US 319

"...the identification of the specific dictates of due process generally requires consideration of three distinct factors:First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value,of additional or substitute procedural safeguards, and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." at 335

"[D]ue process is flexible, and calls for such procedural protections as the particular situation demands."

"Norwood v Slammons", W.D.Ark 1991 788 FSupp 1020

"Palko v Connecticut", 302 US 319,327

"The hearing, moreover, must be a real one, not a sham or a pretense." at 327

"Regents of the University of California v Bakke", 438 US 265, 311-12, 319 n 52, 404

"...the purpose of helping certain groups whom the faculty at the Davis Medical School perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like the respondent..."at 310

"It is an atmosphere in which there prevail "the four essential freedoms" of a university-to determine for itself ON ACADEMIC GROUNDS (petitioners emphasis) who may teach, what may be taught, how it may be taught, and who may be admitted to study" at 312

"If the applicant can establish that the institution does not adhere to a policy of individual comparisons....the presumption of legality might be overcome, creating the necessity of proving legitimate educational purpose." at 319[53]

Fairness in individual competition for opportunities, especially those provided by the State, is a widely cherished American ethic"

supra

"Tarkla v Cunningham", 917 F.2d 890 (5th Cir 1990)

"Student grades, as reflected in educational records, can only be inaccurate or misleading, if they do not reflect what the grader intended or if they are mathematically incorrect."

at 891

"Tinker v Des Moines School District", 393 US 503, 506 (1969)

"It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" at 506

"That they are educating the young for citizenship is reason for scrupulous protection of the Constitutional rights of the individual, if we are not to strangle the free mind at its source and teach the

young to discount important principles of our government as mere platitudes" at 507

"Any departure from absolute regimentation might cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance.But our Constitution says we must take this risk...; and our history says that it is this sort of hazardous freedom-this kind of openness, that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society." at 508-509

"In our system, state operated schools may not be enclaves of totalitarianism ...students in school as well as out of school are persons....students may not be regarded as closed-circuit recipients of that which the state wishes to communicate ..." at 511

Before the Supreme Court of Vermont May 10, 1994(Oral Argument Read to Court THIS Date)

1. As an Appellant-Plaintiff pro-se, I ask the Court to listen carefully to a common petitioner without filtering and sifting my language, not the language of practiced attorneys.

2. This is a Public Access to Documents Lawsuit, on Appeal.

3. The Lamoille Superior Court failed to indicate, in its decision before the Supreme Court, how the Appellee-Defendants complied with Access to Public Document TIME and CONTENT requirements per my 7 Aug 92 1 VSA 315-320 request for Due Process documentation.

4. Without indicating a document which complied with the Public Access Laws, the Lower Court claimed, under Goss v Lopez and Horowitz v Missouri, that "due process" appropriate to my circumstances was provided, therefore NO DOCUMENT was required to meet Time and Content provisions of my 1 VSA 315-320 request.

Thus, the Defendants' claim that no document existed or exists is valid, as is their assertion that esoteric, professional judgement provided appropriate "due process".

The Lamoille Superior Court made FOUR errors:

A. The College's Accreditation Contract with the Regional Accreditation Agency, the New England Association of School and Colleges, as specific contract governing among other things the Federal Loan Guarantees behind the $3100 VSAC funding spent by this student on his Graduate Internship, also governs the academic policies and practices of the College, requiring specific policies regarding the "...admission, retention, expulsion and re-admission..." of students in courses of studies, said policies clear, concise,written, published and readily available to the student. (NEASC pg 17,section 4.41)

That document is the Johnson State College Code of Conduct 1991-92, the document under request, and reasonably "...known by government officials by that name or any other name" ((1 VSA 318 (a) (4)).

"In such cases, the Board of Education will have to ascertain the Law and also ascertain the facts." (Anti-fascist v McGrath, @ 170).

B. In citing Goss v Lopez, the Lower Court erred in presuming that Goss v Lopez is the DE

MAXIMUS process application standard, not the DE MINIMUS foundation regarding student hearings. Thus "...some sort of hearing...", as the "appeals" at the College were, which the Lower Court cites as adequate to prevent error, are inadequate.

Goss v Lopez grants "flexibility", under Eldridge v Matthews (actually Morrissey v Brewer), to provide maximum protection as the circumstances mandated.The Court, in concluding Goss v Lopez, was precise in this matter:

"We should make it clear that we have addressed ourselves solely to a short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.Nor do we put aside the possibility that in unusual situations, although involving only short suspensions,something more than the rudimentary procedures will be required." (supra, at 584)

If my "suspension" from the High School, an action that fails the minimal procedural tests of the Goss v Lopez MINIMUM require-

ments, failing as well the Vermont 4300 Regulations of the Vermont Department of Education regarding suspensions, is not "..unusual circumstance...", then I am hard pressed to conceive of what the Court would consider to be "unusual".

The ex-post facto "suspension" that fails Goss v Lopez is the "probable cause" listed on the College's expulsion letter of April, 1992.

There is no suspension in force through current date. The actions of the College are no more than gross "ultra vires" expropriation of my property and liberty.

"Fairness can rarely be obtained by secret, one sided determination of facts decisive of rights" (supra at 580)

The 9 April 92 JSC Department of Education meeting regarding the 27 Mar-2 April 92 grading frauds is a secret meeting.

"Secrecy is no congenial to truth seeking, and self-righteousness gives slender assurance of rightness" (op cit).

The April 27, 1992 "suspension of internship" meeting at Spaulding High School is a secret

meeting.

"Disciplinarians...frequently act on the reports and advice of others...the facts and the nature of the conduct under challenge are often disputed.The risk of error is not at all trivial..."

The Graduate Committee "hearing" of 28 May 92 is created, molded, prompted, conducted and concluded "...on the advice of others."

C. In citing "Horowitz", the Superior Court assumed, despite the overwhelming body of evidence to the contrary, that the esoteric, academic nature of the dismissal and /or the esoteric, academic process mandated minimal process. Without examining this "academic" assumption, as detailed in the then Plaintiff's documents, the Lower Court failed to notice that the dismissal was of a disciplinary nature, not an academic issue.Sans formal process, per the Code of Conduct, the document sought, the dismissal is an "ultra vires" expulsion shielded from discovery by the "ersatz academic due process" the Appellees substituted.

1) When dismissed, this student was neither on academic probation, nor subject to academic

remediation, nor legally suspended from the High School, nor under any other disciplinary cloud, social or scholastic, misdemeanor or felony.

2) A singular academic failure, i.e., a failed test, late homework or an incomplete assignment, is hardly a traditional cause for a "one-strike-you're out" expulsion.

3) Alleged violations of rules, codes,laws or moral ethics are disciplinary charges that do lead to summary dismissal, pending appeal.

"In such cases (conduct related behaviors of students in good standing) a talismantic reliance on labels should not be a substitute for the sensitive considerations of the procedures required by due process.When the facts disputed are of the type susceptible of determination by third parties, as the allegations about respondent plainly were (the High School "ethics code" must be extant),there is no more reason to deny all procedural protection to one who will suffer loss than there was in Goss v Lopez, and INDEED there may be good reason to provide more protection (the new aspects of the Horowitz appeal process that aid-

ed the respondent, Horowitz at102;administrative and administrator reluctance to afford due process,supra at 106 [21]... Justice Marshall (in dissent).

" Like the traditional disciplinary case, the determination of whether the plaintiff did or did not comply with school regulations is a question of fact.Most importantly, in determining this factual question, reference is made to a standard of achievement in an esoteric field. SCHOLASTIC STANDARDS ARE NOT INVOLVED, BUT RATHER DISPUTED FACTS concerning whether the plaintiff did or did not comply with certain school regulations.These issues readily adapt themselves to determination by a fair and impartial 'due process' hearing." (supra, at 106, [20])

Unless the rules,regulations, moral ethics codes of the teaching profession are now and then "esoteric secrets",the allegations against me are readily determined under the Disciplinary Procedures of the Code of Conduct, the requested, sought document.

Complete "academic prerogative" outside of true academic measure is not allowed, by mor-

als or law.

4. No measure of the Appellant's clinical ability to teach history at the High School is before this Court now, nor the Lower Court then. This failure to measure attests not the student's clinical ability, but the abject failure of the professional monitoring system required by legal contract(s).

With an initial label, false, of "English Language incompetent", the measuring process slid downhill to the 9 April 92 meeting.A full hearing process was mandated by the circumstances, and this mandated "flexibility", the clear intent of the Morrissey v Brewer standards, was avoided by the College, and by misinterpretation, misapplied by the Lower Court.

There are only contradictions, not parallels, between my case and Horowitz.

The Lower Court fell into the trap Justice Marshall warned of:"A Court's characterization of the reasons for a student's dismissal adds nothing to the effort to find procedures that are fair to the student and the school, and that promote the elusive goal of determining truth (the school's nominal mission) in a man

-ner consistent with both individual dignity and society's limited resources." (Horowitz 107, in dissent).

D. The Lower Court, relying inaccurately on Defendant Hahn's expertise when Dr. Hahn. as the College President states that no due process document exists (that is, the Code of Conduct is not the Due Process document), gives full force approval to the "academic" review process substituted "ad hoc", said substitution allegedly because no pre-existing process was available. Thus the Lower Court sanctioned the "ersatz process" that the College utilized.This was error because:

1) The Court trusted that the review meetings were fair, comprehensive, academically sound and complete, and that Dr. Hahn would ensure true academic due process.

2) The Court trusted that the review process was independent of incestuous administrative bias and scholarly portentous fear of future academic and legal liabilities accruing to the government based on the review process itself.

3) The Court trusted that each "hearing officer" was free to make an independent judgement based solely on the facts before that officer, and that no prejudicial pressures could or would be brought to bear against the official making the decisions.

4) The Court trusted that no "third party" manipulated and controlled the process of review/appeal, that no "regent" behind the appeals venues existed. One did, and this "ex-officio" authority was able to violate the foundation values and norms of administrative process (notice of government action, precision of charge and contrary government evidence, a forum prepared and qualified to both hear the defendant's contentions and act substantively on those contentions, and a forum which would, having directly heard the citizen,, act decisive of rights "Anti-fascist v Mc Grath, 341 US 123 at 169) by hiding behind a screen of so called academic prerogative.

The actions of the College, that is the government, in terminally dismissing the student are no more than Bills of Attainder supported by ex-post facto pseudo regulation and ersatz appeals procedures.

The College, that is, the government, may not operate in this totalitarian manner,a process proscribed by the Legislative Branch to itself, and thus all.

Unable to dismiss a 3.90 GPA Graduate Intern, and unable to legitimately find a disciplinary infraction in the Intern's morally sound, ethically framed and legally mandated grievance exposing academic fraud and felony child abuse, the College's Department of Education illegally and immorally expelled the student rather than deal with the facts of the matter. When the scope of the Education Department's errors became known to the College,the senior administrators, now the Appellee-Defendants, released the academic internal power to determine the truth to the "regent", now the "4th defendant", Paul Sutherland. Esq and/or Sutherland and Collins, Mr. Sutherland's law firm.

a) Sutherland built the Graduate Committee process, controlled the hearing and wrote the "Graduate Committee Report" of 2 June 92

b) Sutherland similarly manipulated the "Academic Dean Appeal Process", writing, on 16 Mar 93, the "Academic Dean Report" of 23 Mar 93, the latter (and/or former, since these are IDENTICAL reports) the basis of the "President's Review and Decision" of 11 June 93.

The "informal appeals process" that the Lower Court approved is a political sham,a pretense of procedure substituted by Defendants Carpenter and Sutherland for genuine Academic Due Process, said genuine process "...a precision instrument..." Joughin at 271.

"...Academic Due Process is able to teach something important about the nature of learning itself, because its action is so much like that which created the educational treasury it (Academic Due Process) guards..." (op cit)

"Academic Due Process is a precision instrument; It (Academic Due Process) has a specific applicability or jurisdiction; it (Academic Due Process) operates by established rules; it (Academic Due Process) concerns itself with

testable facts, and then tests them; it (Academic Due Process) is a demonstration of the human intellect at work, submitting tentative conclusions to comparisons with controls (through the consideration of evidences) and, while moving forward with a particular proceeding,it (Academic Due Process) tests its own working hypothesis by constant reference to the burden of proof.

A full scale application of Academic Due Process demonstrates powerfully the nature and use of the scholarly mind." (op cit)

Even if the Academic Due Process leads to embarrassment of the scholars charged with administering Academic Due Process!!!!!

Hearings must be genuine. "...not a sham, or pretense..." (Palko v Conn 333 US 257, at 273).

Under 1 VSA 315-320 the Defendants are obliged to surrender documents directly identified or known to the Defendants, and their legal advisors, to be essentially the documents under request.Only if the Courts can reasonably conclude, on the basis of the evidence before the Courts,that a governmental body con-

sisting of four (4) lawyers,four (4) educational Chief Executive Officers, three (3) department heads, and half a dozen senior educators, all licensed in their particular professions,thus knowledgeable regarding Due Process in the Educational jurisdictions which these professional control, were suddenly struck dumb and ignorant, can the Courts excuse the failure of the government to acknowledge the Due Process primacy of the College's Honor Code, the Johnson State College Code of Conduct 1991-92,the document sought under this suit.

What the Court is most likely to find, based on the evidence, is that this body of educational professionals, having been caught initially with their "hands in the moral/ethical cookie jar",meanspiritedly punished the witnesses of these fouls by false allegations, pre-emptive sanctions and punitive process, hoping to distract from the "crumbs of the crime" blatantly clinging to the coats and dresses of the educational experts.

CONCLUSION:

At issue, fundamentally, is whether the 14th

Amendment Rights of students AND teachers, rights affirmed in "Tinker v Des Moines" circumstantial to a Vietnam War protest also apply to Spaulding High School American History students protesting not a distant war but daily academic abuse in their own classroom.

At issue, fundamentally, is the question of whether procedure sufficiently formal, relative to the potential and actual sanctions available to the government, that is, the College Honor Code, the procedure document sought, was withheld, and thus Due Process denied."This institution shall be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor tolerate error as long as reason is free to combat it" Thomas Jefferson

"What then are the limitations of the freedom of the faculty?They are the limitations on independent thought. They could be nothing more than the laws of logic and the laws of the country"

Robert B. Hutchins in MacIver, op cit 223

"In such cases, the Board of Education must ascertain the law and ascertain the facts" (previous quote and reference)

"...these (Boards of Education) have,of course, delicate and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights." (Tinker v Des Moines, op cit at 507)

The Court is asked to carefully sift the facts in evidence and decide this appeal on it's merits.

The Appellant-Plaintiff's entire graduate career was administered outside the rules governing graduate school behaviors.

Within the Graduate Program,the Graduate Internship was corrupted by official neglect and abuse.

The Graduate Internship was subjected to an "ultra vires" suspension, this post-dated "su-pension" the probable cause for the "ultra vires" expulsion .

From this "poisoned tree" of illegal and immoral acts falls the novel and oft byzantine "appeals process", a "poisoned fruit".

In order to conceal with the evident secrecy

the truth.

"...in our system, undifferiented fear or apprehension of disturbance is not enough to overcome the right of freedom of expression..." (Tinker, op cit at 508"

Novel appeal procedure is allowed if a) none exists and b) if the new process aids the respondent student. (Horowitz, op cit at 92-93)

Invoking administrative construction to cover illegal acts does not legalize the acts concealed (Anti-fascist v Mc Grath at 136)

"...The validity and moral authority of a conclusion depend on the mode by which it was reached (supra, at 171)"

Under the exact circumstances of this citizen's Graduate Career a most formal,adversarial Due Process was required,per the document concealed, the College Honor Code, as well as additional ethical,moral and legal precedents. On these errors, extant in the Superior Court findings and judgements under appeal,I ask the Vermont Supreme Court to reverse and set for trial,and in the process to strike the "Horowitz Precedent" which allowed duality of process, rather than legal proportionality, to

govern the government's behaviors.

May 10, 1994 In Morrisville, Vermont:

John Lucas pro-se

PROCESS SUMMARY;FACTS V DECONSTRUCTIONS

No less than, and perhaps more than legal determinations, traditional, genuine American Academic Due Process rests on evidences and theories surviving the tests of the evidences.

Fact: Not one of the teacher-student's grievances regarding governmental academic fraud has been substantively or constructive -ly handled by the educational governments; the first is destroyed, the second suborned to an immediate counter grievance, the third is deflected by Regent Sutherland.

Fact: Teacher-student allegations of gross professional grading misconduct by Richard Wilgoren, filed within Academic Due Process frameworks, and A) unrefuted internally or externally by Wilgoren, who B) in his si- lence,post full publication, has not been the subject of a professional fitness-to-teach process by his peers, said allegations have successfully passed through the stringent Academic Due Process test and are now facts under Academic,thus legal rules.

Fact:The myriad concealment, mutilation, destruction, plagiarizing and forging of documents within the academic and legal portions of this case include, but are not limited to the following: the "2nd English Competency Test": internship "pre-placement interview" notes: state mandated,signed internship contract (between JSC and SHS); 3rd semester mid-term student progress reports of the SHS American History students; legally mandated written suspension notice to teacher-student; teacher-student's 8 page written report of the "grading incident"; student interviews conducted by SHS Psychologist Downs and report(s) of same;attendants and substance of the 27 Apr 92 "post-suspension" meeting/ hearing at SHS (discovered Sept 93);child-abuse complaint referral notices from Health and Human Services Commissioner to SHS and VtDoE;SHS ethics,morals and regulatory codes governing student-teachers; grievance procedures allegedly violated by teacher-student; and copies of 16 VSA 12:Oaths signed by any educator involved in the case before the Courts.

Fact: Despite the concealment of the SHS Teacher Grievance Policy, the method employed by the teacher-student to notify the authorities and parents to the then grading irregularities is consistent with both the SHS process as well as the JSC student grievance policies as published, said publications in the case file as discovered by teacher-student despite official inactions and hindrances.

Fact: Not by implicit or explicit understanding, nor by oral or written agreement, has the teacher-student entered into a Bond Servant Contract with the Political-Educational Establishment, JSC, SHS or VSCC, whereby the Bonded Servant, in exchange for his Constitutional Rights of Free Speech, Peaceable Assembly,Petition of Grievances, or any other Guaranteed Right, acquires any property of tangible,real value, a Teaching License, a Masters Degree, or any other comparable benefit.

Fact: By virtue of the unsupervised Graduate Teaching Assistant's labors performed involuntarily by the teacher-student, labors he was deceived into paying for while others were

paid for the actual work performed, in a situation where the public work performed is an employment, not a corvee labor, contract, and where the methods of grievance and redress were substantially withheld and denied, being also absent a criminal conviction of the teacher-student, the Political-Educational Establishment,(JSC,SHS and VSCC), has explicitly and implicitly, with both oral and written contracts to bind all parties, created a de facto as well as de jure Involuntary Servitude Condition enslaving the teacher-student,a slavery of contemporary quality not lacking in many of the historical aspects of this odious practice.
Fact: BY ruling of the Vermont Supreme Court 23 Aug 94, the condition of enslavement bears a Vermont and Federal seal, repealing the 1st Article of the 1st Constitution in the Land specifically prohibiting enslavement, Vermont Constitution Chapt.1, Art 1 , 1777, 1786
Unable to utilize a genuine American Academic Due Process in its duties to this teacher-student, the College, its controlling corporation and the High School, have, since 2 Oct 92

concealed their own defects, academic and legal, behind a rolling series of administrative constructions, each construction ever larger to cover the flaws of its predecessor. In order to accomplish this feat, the Political Educational Establishment (JSC,SHS and VSCC) need only to control the labels and the free intellects of those involved. By deconstruction, "English Competency" becomes "Philosophical Orthodoxy","mandatory" means "optional","Graduate Intern" equates to "Graduate Teaching Assistant", "complaint" equates with "sedition","leave of absence" melds to first "suspension", then "expulsion", 8 page "grading incident" report becomes 6 page "student report", "appeal" means "remediation", "remediation" equates with "compulsory negotiation",3rd party "draft letters" become expert, esoteric "appeal decisions", "hearing" devolves to "meeting", "process" is simply "motion". Label gun in hand, the educational experts and authorities also revise the Buckley Amendment, the Family Education Rights and Privacy Act of 1974, re,olding this law into

an omnibus Federal "Feinberg Contract", classifying "...all information..." in the classroom as "...confidential...", the property of the classroom teacher, who "...must be consulted in all matters relating to the sharing of student information".

Thus, talking out of school is as dangerous as talking up in the classroom. In fact, talking at all is suspect. As the record clearly demonstrates, the number of junior and senior educators who are, "...not at liberty..." to contribute,is totality. This proscription applies especially to "Constitutional issues",explaining neatly why no one takes the 1968 Oaths for Educators, 16 VSA 12.(LaC 1 Nov 93 Plaintiff's Supplimentary Brief, VtSC Exhibit 3)Thus, the advocates of "in-terrorem administrative practices" have subverted 25 years of Federal Court oversight in Vermont education, simply ignoring their requirements under 16 VSA 12; Oaths. (Evidence as above)

This teacher-student's enslavement was unavoidable as well as predictable.He listened to a different set of authorities.

"This institution will be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor tolerate any error as long as reason is free to combat it." Thomas Jefferson

"If the teacher is not respected, and the students are not well cared for, great calamity will result, regardless of how clever one is. This is the crux, or the enigma, of the mystery." Lao Tsu

The thrust of the Supreme Court decisions beginning with "Keyishian v Regents" through "Bakke v Regents" is to balance the rights of educators and their public institutions with the rights of the students to individually seek knowledge and gain viable learning experiences.Since the state, the government, is so intimately entwined in the process, certifying, financing and regulating public education, the goals of the institution and those of the individual, when there is conflict, must be sorted and balanced by the Courts.

Unless the professed rights of the students, groups or individuals, threatens to substantially disrupt the nominal activities of the educational institution, the individual or group student right to speak out, even foolishly, is an integral part of the process of learning.

On the other hand, the Discipline of the Academic Due Process does not allow the educators, students once with the right to speak out with abandon, to promote as educators the foolishness they must tolerate from their students. As educators, they must "...ascertain the law as well as ascertain the facts...", both within and without their disciplines. The power and convenience to control the labeling mechanisms is fraught with temptation. Within "Horowitz", the Court has mandated that "esoteric expertise" does not equate with other than license as granted through the traditional Academic Due Process.

Thus professors may not shrink from embarrassing, uncomfortable,disputatious student-teache discourse by deconstructionist

re-labeling, professional proscription or abject flight and surrender. Nor may professors neglect their students, the mentorship of their students; nor may teachers, measuring the student to defect, walk away without substantive attempts at remediation.

Professors may not play Academic Due Process as a "sudden death" quiz game.Nor may they change the rules, per "Horowitz", in the middle of the game, unless the object of the change is to actually assist the student to get to the academic goal.Nor may teachers raise the goal posts for some and lower the goal posts for others. Academic Due Process mandates a level playing field, not a field of leveled players.

The Defendants cite of the "4 Freedoms" in "Bakke" is their expansion of the university's right to determine which students advance. The case before the Court indicates that the Defendants are expanding "Bakke" to MATRICULATED students, creating an arbitrary, completely capricious "rationale" to fail students who have completely mastered all of the prescribed course work.This is not Academic

Due Process (LaC: Academic Due Process, VtSC: Appellant's Memorandum of Law).

The flaw, as Justice Thurgood Marshall warned in his partial dissent in "Horowitz", was that the keepers of the flames of knowledge held the label gun.Relying on professional good behavior,absent the Constitutional liberties and restraints which promote good behavior throughout the society, was to invite, forecast Justice Marshall, conflicts of interest over license versus licentiousness, which the conflicted could resolve, as experts, outside of Constitutional purview.(Appellant's Oral Argument, VtSC).

The Court ruled in "Keyishian" that in-terrorem administration buoyed by the "Feinberg Contract" was so restrictive of campus speech as to be undemocratic. Vermont cancelled its "Feinberg Contract" with teachers, substituting 16 VSA 1 Oaths.

Now all teachers in Vermont were Constitutional Officers.

Except, as in this case, those who failed to take the oath, understand the oath, and or act professionally under the oath.

Johnson State College, Johnson, Vermont, has been the premier teacher training institution in Vermont since the early 19th century. In no contemporary, current or past JSC publication, syllabus or lesson plan is 16 VSA 12, Oaths, nor the duties and responsibilities of educational Constitutional Officers, under 16 VSA 12, even obliquely mentioned.

In "Tinker", the Court ruled that the risk of a dispute breaking out on the campus was the Constitutional State of the campus, and the risk to be born by those operating the schoolyard gate.But without Constitutional Officers at the schoolyard gates, disputes in this case were extinguished.

In "Goss v Lopez", the Court set minimum standards for deprivation of rights under the public school contracts.Without Constitutional Officers, notice of student defect, student capacity to challenge, and substantive re-affirmation of charged defect are not required, orally or on written form, in this case.

And finally, in "Horowitz", genuine Academic Due Process, that process, in the profession of teaching, which allows for a Constitutional

flexibility of procedures relative to time, circumstance and venue,granting prerogative to Constitutional Officers also esoteric experts in education, is deconstructed,creating a gross institutional process failure providing neither Constitutional Officers nor esoteric experts.

No process decisive of property and liberty rights is so flexible as to transmogrify,as an aberrant apparition,each and every time the citizen attempts to defend his rights and deflect official proscriptions and punitive, putative sanctions.

Just the statement, that "...you did wrong...", absent specific charge and remedy, save expulsion, is abject, antithetical rejection of educational ethical, moral, and thus legal power granted by the Court's aforementioned educational rulings.

That a "third party" designed the ad hoc, de novo, instant and constant metamorphisms of "appeal", said "third party" then initiating,nurturing and determining the metamorphic

outcomes, is not the academic prerogative that "Horowitz" grants to esoteric experts, to the scholars for scholarly determinations of student capacity.(VtSC: Appellant's Brief)

As stated in the description of the case, the metamorphic outcome in this instance, a manipulative travesty of Constitutional power, the creation of Constitutional Officers, esoteric experts as well as "third parties", is no less than Vermont State Certified Involuntary Servitude.

Surely the Court's intent in "Horowitz" was not to provide a Constitutionally exempt culture within which students are the slaves of their scholastic superiors.

The course of study that this teacher-student entered was labeled "Masters of Education; Secondary Vermont Teacher's License Preparation, Social Studies."

The Vermont Court's reluctance to intervene, citing "Horowitz" precedents, is no more than a talsimanic reliance on the Defendants' self-applied esoteric labels.In effect, the Vermont

Courts have intervened in the scholastic process by failing to closely examine the facts, actions and behaviors beneath the labels, allowing for a redefintion of academic due process by rogue scholars and their allies.

The Courts have effectively re-labeled this teacher-student's Graduate Master's Degree Program as "pre-God".

The grossest dangers in "outcome based" instructional programming, with "God-like" rogue educational technicians preening their knowledge by predicting outcomes, in this case failure. are most apparent.

The Constitution can not support this erroneous methodology.

Signed this day, the 18th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

John Lucas

I Hereby certify that on this date, the 21st of November, 1994,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures, four (4) copies of this Writ of Certiorari, plus and additional copy, five (5) in all,to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service,Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing address of the Agent of Record of the Defendants,the law firm of Sutherland and Collins, P.C.

REPREMATICED 12/7/94 John Lucas